**January 31, 2023**

Xavier Becerra
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
200 Independence Avenue, SW
Washington, DC 20201

**Re: CMS-9898-NC– Request for Information; Essential Health Benefits**
87 Fed. Reg. 74097 (December 2, 2022)

Dear Secretary Becerra and Administrator Brooks-LaSure:

The American Cancer Society Cancer Action Network (ACS CAN) appreciates the opportunity to comment on the Request for Information (RFI) on issues related to the Essential Health Benefits (EHB). ACS CAN is making cancer a top priority for public officials and candidates at the federal, state, and local levels. ACS CAN empowers advocates across the country to make their voices heard and influence evidence-based public policy change, as well as legislative and regulatory solutions that will reduce the cancer burden. As the American Cancer Society's nonprofit, nonpartisan advocacy affiliate, ACS CAN is more determined than ever to end cancer as we know it, for everyone.

More than 1.9 million Americans will be diagnosed with cancer this year and more than 18 million Americans living today have a history of cancer.[1] Having comprehensive and affordable health insurance coverage is a key determinant for surviving cancer. Research from the American Cancer Society shows that uninsured Americans are less likely to get screened for cancer and thus are more likely to have their cancer diagnosed at an advanced stage when survival is less likely and the cost of care more expensive.[2]In enacting the Affordable Care Act (ACA) Congress mandated that qualified health plans must cover certain essential health benefits (EHBs), which were intended to be a comprehensive set of benefits that would correct longstanding coverage gaps in the individual and small group markets and improve access to health care.

We are pleased CMS is examining the current EHB benchmark standards. Since the EHB standards were implemented in 2014, millions of consumers have gained access to plans that require coverage of EHB services. At the same time, we recognize there are refinements that need to be made in order to ensure that the EHB standards comport to the congressional intent of the ACA. In addition to responses to specific questions posed in the RFI, we offer the following comments for consideration of any future rulemaking:

- Enforcement: States are primarily responsible for implementing enforcement over issuers to ensure compliance with the EHB requirements. As a result, enforcement of EHB protections will vary from state-to-state with some states being more proactive about enforcing EHB protections. CMS has the authority to step in and enforce health insurance market reforms, like EHB standards, if CMS determines the state is not substantially enforcing these requirements. We urge CMS to engage in robust oversight (including market conduct examinations) to determine the extent to which consumers have unimpeded access to EHB services, regardless of their state of residence.

[1] American Cancer Society. *Cancer Facts & Figures 2023.* Atlanta: American Cancer Society; 2023.
[2] Zhao, J., Han, X., Nogueira, L., Fedewa, S.A., Jemal, A., Halpern, M.T. and Yabroff, K.R. (2022), Health insurance status and cancer stage at diagnosis and survival in the United States. CA A Cancer J Clin. https://doi.org/10.3322/caac.21732.

- Health Equity: Cancer is a disease that can affect everyone but doesn't affect everyone equally. For example, the cancer death rate is higher among individuals with lower socioeconomic status (SES) compared to people with higher SES and this gap is widening.[3] As policies are enacted in HHS and other agencies to address health inequities, we urge that such efforts are incorporated into EHB benchmarks in order to more quickly and equitably accomplish the Administration's goal of eliminating health care disparities.
- State benchmarks: We urge CMS to require that any change to a state benchmark should be subject to a public notice and adequate amount of time for comment at the state level so that all stakeholders have an opportunity to provide relevant feedback.

## II. SOLICITATION OF PUBLIC COMMENTS

### *Benefit Descriptions in EHB-Benchmark Plan Documents*

CMS has allowed states to select their own EHB benchmarks and a great deal of flexibility to update those benchmark standards if they so choose. CMS is seeking public comment on the extent to which States may require additional guidance on how to ensure that plans are interpreting the EHB-benchmark plan documents in a manner that provides EHB coverage to consumers, consistent with the ACA.

*Uniformity of EHBs*: We believe that essential health benefits should be uniform in all states, because they are, in fact, essential. The essential benefits available to cancer patients should not vary depending on where the individual resides (the delivery of those benefits may vary depending on geography and other factors, but the benefits themselves should not vary). We urge CMS to provide states with more clarity regarding what constitutes an EHB standard. States would then be free to provide additional services as they see fit.

*State mandates*: We also note that under current requirements states that enact state mandates (with some exceptions) are required to defray the cost of those mandates. We are concerned that the state mandate defrayal policy hinders patients' access to new and innovative items and services and is antithetical to CMS' intended goal of providing states flexibility to design their own EHB benchmark standards. Therefore, we urge CMS to enact a policy that automatically incorporates state mandated benefits into the state EHB benchmark after a set period of time.

### *Review of EHB*

ACS CAN appreciates CMS's recognition of meeting its statutory obligation to periodically review the EHB to determine whether it needs to be modified to meet the needs of enrollees.

Barriers of Accessing Services Due to Coverage or Cost

*Use of telehealth*: CMS seeks comment on how telehealth utilization could better address potential gaps in consumer access to EHB services. ACS CAN is supportive of the use of telehealth services and recognizes that millions of Americans received care via telehealth during the pandemic. However, we caution that while telehealth can help individuals access needed care, we do not believe that it is appropriate to limit individuals' access to EHB services solely via telehealth. Individuals must be able to utilize EHB services through traditional, non-telehealth means.

[3] Cancer Facts & Figures 2023.

*Use of utilization management tools*: CMS notes that some plans impose utilization management tools (in the form of step therapy, prior authorization, etc.) on EHB products and services, particularly with respect to prescription drugs. Arbitrary and unreasonable limits combined with administrative hoops can be used to restrict or delay needed care or steer consumers into or away from certain plans. As CMS moves to update its EHB requirements, we urge that it clarify that utilization management tools should be used only if they are based on scientific evidence, are standardized, and are not discriminatory in nature. CMS should review the use of utilization management tools on EHB services to ensure the use of the tools do not result in delayed access to these vital services.

Changes in Medical Evidence and Scientific Advancement

*Coverage of new technologies*: CMS seeks comment on changes in scientific advancement that have occurred since 2013 that are not reflected in the current EHB-benchmark plans.

Increasingly the use of precision medicine has been a vital component to improving cancer outcomes. Research has resulted in the availability of targeted therapies that are designed to work in patients with very specific biomarkers.[4] In 2019, targeted therapies for cancer accounted for roughly 25 percent of targeted drug approvals by the FDA. More targeted cancer therapies are in the pipeline. To use these targeted therapies, a cancer patient must have been tested for biomarkers. Unfortunately, medical advancements such as biomarker testing are not included in all EHB benchmark plans, which can impede patients' access to these vital tests. As CMS updates its EHB benchmark standards, we urge that it ensure that comprehensive biomarker testing is included.

Addressing Gaps in Coverage

*Preventive Services*: CMS seeks comment on how the EHB could be modified to address any gaps in coverage or scope of benefits.

One of the EHB categories is preventive services, which has led to an increase in cancer screenings, earlier detection of chronic health conditions, and narrowing racial disparities. Current regulations require coverage of services that are rated "A" and "B" by the U.S. Preventive Services Task Force (USPSTF). Unfortunately, there have been inconsistencies in translating USPSTF clinical recommendations into coverage determinations. As noted by USPSTF and others, screening for cancer is a cascade of events that must occur in a coherent and organized way for the full benefits to be realized to the patient (for example, a patient with an abnormal screening mammogram may need several other services before being diagnosed with breast cancer, including blood tests and various other imaging tests). To ensure that patients have the optimal results from cancer screening, it is imperative that they complete the process without delay.

ACS CAN has also frequently requested that HHS specifically require plans complying with the coverage of preventive services to cover all forms of tobacco cessation treatment, including in-person individual, in-person group, and telephone-based individual counseling as well as all tobacco cessation medications approved by the U.S. Food and Drug Administration for that purpose, with no cost-sharing and prior authorization. We encourage CMS to make these clarifications to strengthen the preventive service category of EHB services and to do so in regulations, not in sub-regulatory FAQs, which do not have the same force of law as regulations.

[4] The term "biomarkers" refers to the biological molecules found in blood, tissues, or other bodily fluids that provide insight into the physiological process, medical conditions, or diseases.

***Coverage of Prescription Drugs as EHB***

*Prescription Drug Coverage*: Currently plans are required to cover the greater of: (1) one drug in every United States Pharmacopeia (USP) category and class or (2) the same number of prescription drugs in each category and class as the EHB benchmark plan. We are concerned this standard is insufficient to meet the needs of individuals with serious illnesses, like cancer, that often require access to innovative new therapies. There is no single oncology drug that is medically appropriate to treat all cancers. Cancer is not just one disease, but more than 200 diseases. Cancer tumors respond differently to prescription drugs depending on the type of cancer, stage of diagnosis, and other factors. As such, oncology drugs often have different indications, mechanisms of action and side effects – all of which need to be managed to fit the medical needs of an individual.

We urge CMS to revise the prescription drug EHB benchmark standard and require plans to cover at least two drugs per USP category and class, in line with Medicare Part D requirements. In addition, we are aware that some covered prescription drugs are being designated as non-essential in order to prevent the patient out-of-pocket payments from counting towards the maximum out-of-pocket limit. We urge CMS to require all covered prescription drugs be treated as essential health benefits for the purposes of patient out-of-pocket obligations.

**CONCLUSION**

Thank you for the opportunity to comment on the Request for Information on issues related to the Essential Health Benefits. If you have any questions, please feel free to contact me or have your staff contact Anna Schwamlein Howard, Policy Principal, Access and Quality of Care at Anna.Howard@cancer.org.

Sincerely,

Lisa A. Lacasse, MBA
President
American Cancer Society Cancer Action Network