January 26, 2012

To: California Health Benefits Exchange Board
From: AIDS Project Los Angeles
Asian & Pacific Islander Wellness Center
LA Gay and Lesbian Center
Mission Neighborhood Health Center
Project Inform
San Francisco AIDS Foundation

RE: Essential Health Benefits for People with HIV and other chronic conditions

Thank you for the opportunity to comment on the Essential Health Benefits package in California. Implementation of the Affordable Care Act (ACA) and the establishment of a mandatory essential health benefits package represent both a great promise and a challenge for people living with HIV.

In 2014, thousands of people living with HIV and AIDS will have access to insurance – through Medicaid expansion or the Health Benefit Exchange - many for the first time. But to be meaningful, coverage must include the comprehensive services that people living with HIV and AIDS need to stay healthy. Services that play a vital role in effective management of HIV disease include comprehensive prescription drug coverage, preventive services such as routine HIV testing, routine access to HIV experienced medical providers and appropriate laboratory testing, chronic disease management services and mental health and substance abuse services. Such services are necessary to ensure that people living with HIV/AIDS are diagnosed early, stay in regular care and treatment and realize the lifesaving benefits of HIV treatment. Further, because we now know effective HIV treatment prevents HIV transmission, comprehensive care for people living with HIV and AIDS has the potential to dramatically curb and even end the HIV epidemic in this country.

People living with HIV and AIDS have largely been shut out of the private insurance market by rules that allowed plans to deny coverage to individuals with higher cost conditions, such as HIV/AIDS, place restrictive limits on necessary care, and/ or put coverage out of reach for certain populations by implementing high premiums or excessive cost sharing. Of the 13 percent of people with HIV with private coverage – many find themselves underinsured due to the limitations of the coverage. The ACA includes explicit protections to safeguard against discriminatory insurance practices, and we urge the state to consider these protections as it makes implementation decisions, such as benchmark plan identification, plan inclusion in the exchange and plan accountability to the provision of benefits.

1. **The state should ensure that its approach to the EHB creates an adequate "floor" for health care coverage.**
   Small group insurance plans have historically been less comprehensive than most large group plans, state employee plans, or Federal Employee Health Benefit Program plans.

Small Group plans also tend to have more coverage restrictions and higher cost-sharing requirements that can result in discrimination against vulnerable populations. The largest for-profit commercial HMO operating may be similarly limited.

We urge the State to ensure that the plan chosen as a benchmark has the comprehensive benefits necessary to keep people with HIV/ AIDS and other chronic conditions healthy and functional.

2. **The State should prohibit plans from substituting benefits across and within categories if the HHS does not adopt this protection.**
   Because of the unique needs of people living with HIV and AIDS and other complex conditions, we believe it is likely that allowing plans to substitute benefits will result in limits on or elimination of important services. We also believe that substitution of benefits will serve as a means of discrimination by discouraging certain populations from enrollment which is explicitly prohibited in the ACA.

3. **The EHB must include protections and safeguards to ensure that people living with HIV/ AIDS and other vulnerable populations have access to essential care and treatment.**
   If HHS does not issue regulations requiring coverage of specific services within the essential categories, we urge the state to ensure the availability of necessary health services, especially those that tend to be limited by insurers as ways to discriminate against certain populations in order to discourage enrollment and limit access to essential care and treatment. These services include:

   - **Access to prescription drugs.** The current HHS guidance that would allow plans to cover one drug in each category or class covered by the benchmark is inadequate. The standard of care for people living with HIV/AIDS is a minimum of three drugs from the antiretroviral drug category, including more than one from within the six classes to effectively suppress the virus. In addition, many people who have been on treatment for a number of years have developed a resistant strain of the virus, requiring access to drugs in the same classes with different resistance profiles.

     Explicit protections, such as those provided under Medicare Part D, are needed to ensure that people with certain conditions, such as HIV infection, have access to all drugs necessary to treat their condition as recommended in the federal treatment guidelines.

   - If HHS fails to issue further guidance to ensure access to **comprehensive mental health and substance abuse services, specialty care providers, preventive services, rehabilitative and habilitative care, chronic disease management programs, and laboratory monitoring** according to the standard of care for HIV disease and other conditions, the state must create clear criteria regarding the provision of services by plans.

4. **If HHS guidance and future EHB regulations fail to provide clear patient protections concerning benefit limitations, medical necessity determinations, and utilization management practices that could result in discrimination against vulnerable populations, the state must ensure these protections are in place, clear, and usable prior to 2014. These practices must be based on the standard of care and not driven by cost.**
Regulations and guidance that prohibit insurance companies from limiting access to lifesaving care and treatment through dollar or visit limits on essential services, condition-specific restrictions, and unduly burdensome utilization management and prior authorization practices. For example:

   - Service limits are harmful to individuals with HIV infection and others with chronic conditions who rely on routine medical visits and laboratory monitoring to stay healthy and prevent disease progression.

   - Unrestricted access to lifesaving medications without prior authorization requirements and other utilization controls is necessary to ensure access to the appropriate standard of care in the U.S.

   - Protections must be in place to prevent insurance plans from making it too difficult to access specialists, for example by requiring higher co-payments for specialty care.

5. **Implementation decisions regarding the EHB must continue to be transparent and include opportunities for meaningful public participation.**
California must continue to get substantive feedback from a range of people and communities is necessary to ensure that the proposed benchmark plan takes into account the needs of diverse populations and to satisfy the requirements of the ACA for meaningful public involvement.