



## California Dialysis Council

Legislative Office

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January 25, 2012

California Health Benefit Exchange  
Diana Dooley, Chair  
2535 Capitol Oaks Drive, Suite 120  
Sacramento, CA 95833

Subject: Comments on Essential Health Benefits Bulletin

Dear Chairwoman Dooley:

The California Dialysis Council (CDC) appreciates the opportunity to provide comments to the California Health Benefit Exchange relative to the Essential Health Benefits Bulletin released by the Center for Consumer Information and Insurance Oversight (CCIIO) in December 2011. The CDC is a coalition representing California dialysis facilities, patient organizations, individual renal administrators, nurse managers, nurses, medical directors, and corporations which collectively provide life-sustaining dialysis care to the majority of kidney patients in California. CDC members operate more than 400 dialysis facilities throughout California, providing care to more than 45,000 individuals with kidney failure, also known as end-stage renal disease (ESRD).

Since the passage of the ACA, the dialysis provider community has been engaged in an active discussion with HHS in an effort to ensure the creation of state exchanges, like our California Health Benefit Exchange, which preserve access to quality care for ESRD patients. In 1972, Congress made a commitment to Americans with ESRD by providing Medicare coverage for patients diagnosed with this disease. This coverage, however, is not immediate and in many cases patients with kidney failure prefer to maintain their private insurance for some period of time before moving to Medicare. Given the importance of private coverage to this population, we would urge HHS, and the California Health Benefit Exchange, to maintain the commitment to Americans living with kidney failure by ensuring that coverage for ESRD is expressly included as an essential health benefit. While we appreciate the Agency's desire to provide flexibility to the States, it is critically important that there is no misunderstanding that Americans with this life-threatening condition have access to coverage in the Health Benefit Exchange plans.

## **I. California HBEX Should Urge CCIIO to Ensure Continuity of Care for Dialysis Patients**

Approximately 45,000 Californians are living with kidney failure. Healthy kidneys remove excess fluid, minerals, and wastes from the body and make hormones that keep bones strong and blood healthy. A diagnosis of ESRD means that a patient's kidneys are damaged and do not perform these functions. This means that harmful wastes can build up in the body, excessive fluid is not removed, and the body does not make enough red blood cells. Individuals with kidney failure have only two treatment options – transplantation and dialysis. If such treatment is delayed or not accessible, the individual with kidney failure will die.

In the early 1970s, Congress recognized the importance of ensuring that Americans have access to these life-saving and life-sustaining treatments by covering ESRD for all Americans regardless of age. Today, many individuals who are under 65 develop kidney failure as a result of hypertension, diabetes, or other precursor conditions. For those who have employer group health plans, they may retain their private coverage for up to 30 months before being switched to Medicare. Having this choice is critically important for these individuals who often rely upon this insurance for their families and do not want to find themselves trying to find new health care providers just as they are learning of this life-altering diagnosis.

## **II. California HBEX Should Urge HHS to Establish Coverage for ESRD by Including It in the Definition of Essential Health Benefits**

Given the unique coverage policy for ESRD, CDC urges the California Health Benefit Exchange, in its comments to CCIIO, to indicate expressly that ESRD is covered as an essential health benefit. Additionally, Californians who participate in the California health benefit exchange should have a clear indication that if they develop kidney failure there will be no gap in their coverage now or in the future as the benchmark plans modify their benefit structures.

There is no question that coverage of ESRD meets the criteria set forth by the Institute of Medicine (IOM) in its recommendations to the U.S. Department of Health and Human Services.<sup>1</sup> Current treatment options are the standard of care agreed upon by the medical community. They are safe, medically effective, lead to meaningful improvement in the quality of life of patients, and are cost effective.

Clarifying coverage for ESRD is critically important. Lack of clarity could result in delays in treatments or substantial unnecessary out-of-pocket costs for Californians who may not be able to afford them. Providing clarity upfront would resolve this serious problem without changing what is assumed to be the de facto practice today.

Thus, we would encourage the California Health Benefit Exchange Board to urge CCIIO to follow the recommendation of the IOM, which states:

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<sup>1</sup>See Institute of Medicine (IOM), *Essential Health Benefits: Balancing Coverage and Costs* (2011)(hereinafter "IOM Report").

As a result of the finding of lack of specificity, the committee believes that if a requested medical service can reasonably be construed to fall within one of the 10 covered benefit categories and is not expressly excluded, it should be considered eligible for coverage as long as it is judged medical necessary for a particular patient.<sup>2</sup>

The items and services provided to Californians with ESRD fall within the covered benefit categories, such as ambulatory patient services, emergency services, hospitalization, prescription drugs, and chronic disease management. Thus, we strongly encourage the California Health Benefit Exchange Board to ensure the proposed federal rule on essential health benefits eliminate the lack of clarity and specify coverage for ESRD.

### III. Conclusion

As the Board formulates its own comments to CCIIO regarding the Essential Health Benefits Bulletin, the CDC appreciates the opportunity to provide comment. We would welcome the opportunity to provide you and your staff with additional information if that would be helpful. Please feel free to contact Michael Arnold or Kristian Foy for further information.

Sincerely,



Thomas Paukert, M.D.  
President

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<sup>2</sup> IOM Report, *supra* note 1 at 4-7.