



May 18, 2011

Ms. Cheryl C. Ulmer
Study Director, Determination of Essential Health Benefits
Institute of Medicine of the National Academies
Keck Center, 765
500 Fifth Street, NW
Washington, D.C. 20001

Dear Ms. Ulmer:

On behalf of the National Small Business Association (NSBA), I am writing to reiterate what is at the forefront of the minds of the nation's small businesses with respect to health insurance as you prepare for your third meeting in June and continue to usher recommendations from the Institute of Medicine's (IOM) "Determination of Essential Health Benefits" workgroup to the Department of Health and Human Services (HHS).

Section 1302 of the *Patient Protection and Affordable Care Act* [PPACA, P.L. 111-148], as amended by the *Health Care and Education Reconciliation Act of 2010* [HCERA, P.L. 111-152], empowers the Secretary of the HHS to define essential health benefits. However, beyond the ten broad categories listed in the statute, there is little specificity on essential health benefits. Essential health benefits will have a direct impact on the nation's small businesses. The individual mandate and free-rider requirements provide direct reach into the lives of small-business owners, their employees, and their families. Moreover, all qualified health plans inside and outside health insurance exchanges must meet the essential health benefits requirement.

With that said, small businesses have expressed a high level of skepticism with the establishment of essential health benefits, particularly with respect to its impact on the cost of health insurance post-2014. Their uncertainty is justifiable. Decisions made on the essential health benefits package will have a tremendous impact on its affordability. Small-business owners know that essential health benefits cannot be both generous and affordable at the same time. Indeed, small-business owners annually balance the trade-offs of benefits (i.e., scope of services and plan design) in order to make affordability realistic for themselves, their employees, and their families.

The trade-offs small-business owners have made in the past are not dissimilar to those created by the framework set forth by PPACA. The view that we can establish a comprehensive, high-value essential health benefits package and cover millions more people at the same time simply contradict each other. The intent of health care reform was to work towards universal coverage, improve the quality of care, and decrease the

cost of care. These goals can be reached, but only if IOM recommendations for essential health benefits are right; that is, IOM recommendations to HHS must stress the trade-offs inherent in establishing essential health benefits with respect to its affordability, particularly for small-business owners, their employees, and their families.

Affordability of Essential Health Benefits

The IOM's study panel focuses on providing recommendations to HHS on the criteria and methods for determining and updating the essential health benefits package. Their counsel carries influential guidance on how HHS will ultimately frame the parameters for the essential health benefits. If the IOM recommends principles favoring a comprehensive, high-value essential health benefits package, then small businesses, their employees, and their families will likely be forced to purchase coverage that is unaffordable. Indeed, the brunt of essential health benefits are certain to hit small businesses hardest since big businesses, unions, and government plans already enjoy more generous health plans than do those in the small-group or individual market. Undeniably, past state mandated benefit battles have bypassed these groups as they tend to self-insure under ERISA.

The statute's explicit requirement for the Department of Labor to ascertain a "typical employer plan" is recognition of the variance in health plans in the small-group and individual markets. The requirement is one of the few limitations that PPACA provides on essential health benefits. Unfortunately, the DOL survey of a typical employer plan does not provide an accurate depiction of small-group plans. For these reasons, small-business owners fear that PPACA will force them to "buy-up" in coverage since all qualified health plans post-2014 must carry the essential health benefits. Forcing small businesses, their families, and their employees to purchase insurance that is more expensive than what they already have or can't afford is counterintuitive vis-à-vis the intent of PPACA.

If essential health benefits are too generous, and expensive, then there are two logical outcomes. First, small-business owners may be forced to drop coverage, subsequently sending their employees to the health insurance exchange to purchase coverage on their own. The outcome would be, with respect to lower income employees that would have been subsidized by their employer otherwise, more individuals receiving federal subsidies in the health insurance exchanges. If the employer continues to provide the more generous and expensive coverage, then more employees will be able to claim a financial hardship exemption. These employees could either qualify for federal subsidies in the exchange, which would again inflate the cost of the law, or if these individuals perceive themselves as healthy and immune to sickness, they may simply not purchase insurance at all until they get sick, which leads to a destabilized risk pool that imputes more costs on those that are participating.

The viability of PPACA and the health insurance system, as well as the future ability of small-business owners to afford coverage for themselves, their employees, and their families, depends on striking the right balance on essential health benefits.

Prescriptive versus Flexible Essential Health Benefits

There are two primary schools of thought from small businesses in determining essential health benefits: prescriptive versus flexible. Prescriptive essential health benefits suggest HHS would define the nuances of benefit, provider, and covered person mandates. On the other hand, flexible essential health benefits suggest that the ten broad categories articulated in statute would provide the guidelines for the marketplace to decide essential health benefits.

The nature of small business health insurance over the years has resulted in most small-group health plans being a patchwork of coverage. The annual task of shopping and adjusting plan design to ensure affordability attest to the need for shopping standardization and comparison of health plans. This is a feature that must be prominent in either approach to essential health benefits.

With that said, small businesses still are averse to a one-size-fits-all approach to essential health benefits. Small businesses are skeptical of an overly prescriptive approach because there is the fear that the essential health benefits will initially be too generous or end up that way over time as powerful medical lobbies, consumer advocates, and other targeted advocacy groups ensure that essential health benefits include the interest they represent. On the other hand, there is support from the small-business community, assuming there would not be yearly increases in its value, to define essential health benefits in a way that puts downward pressure on state mandated benefits.

With respect to a more flexible approach that utilizes the marketplace to deliver essential health benefits, there is small-business community support since it provides a logical pathway for innovations in medical practices and benefit design (e.g., comparative effectiveness research or new initiatives to empower consumers to be cost-conscious). However, it is unclear how the need for standardization and comparison can exist when the marketplace's parameters are as broad as the ten categories in statute.

NSBA Recommendations

There are many questions that remain in the small-business community with respect to establishing essential health benefits. However, based on past experiences and discussions underway in the IOM workgroup, NSBA can provide three recommendations that reflect the interest of the small businesses, their employees, and their families purchasing essential health benefits post-2014.

First and foremost, prioritize affordability over the generousness of the benefit package, especially in the initial years. Small businesses, their employees, and their families will have the biggest adjustments in order to purchase essential health benefits. With the ban on annual and lifetime coverage limits, limits on out-of-pocket expenses, and new parameters to cost-sharing and actuarial values for health plans, there are few dials for

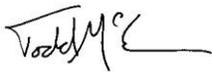
employers to adjust to ensure health insurance affordability. The change from a typical small business health plan to a qualified health plan post-2014 should be minimized to ensure that small-business owners do not have to “buy-up” in coverage. Moreover, affordability will determine PPACA’s viability and the sustainability of risk pools.

Second, if a more prescriptive approach to essential health benefits is taken, the IOM should recommend HHS start with a truly basic level of coverage. Otherwise, if the marketplace is empowered to set essential health benefits, then mechanisms to ensure a level of standardization and comparison should be present.

Finally, there should be an ongoing study to determine the take-up or attrition of health coverage in the small-group and individual markets as a specific result of the essential health benefits requirements. The annual updating process should include realistic processes that can decrease the value of the essential health benefits as well as increase its value. New changes that add to the benefit must be addressed in terms of cost; that is, assessments to the essential health benefits should come with a cost-benefit analysis to ensure that the premium cost to consumers is not financially burdensome.

In large part, a main focus of PPACA is to address the health insurance needs of small businesses, their employees, and their families. I thank you for the opportunity to provide NSBA’s perspective on essential health benefits and how they impact small businesses. Please do not hesitate to contact me with any questions, or if there is any way that we can assist in the workgroup’s deliberations.

Sincerely,



Todd O. McCracken
President

Cc:

All members of the “Determination of Essential Health Benefits” workgroup