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August 31, 2023

Katie Merritt
Director of Policy and Planning
Office of the Insurance Commissioner
1326 Strawberry Square
Harrisburg, PA 17120

Re: AHIP Comments on Pennsylvania Insurance Department EHB Benchmark Plan Notice

Dear Director Merritt,

I write today on behalf of AHIP and our members to share our input on the Insurance Department's July 29, 2023 Notice 2023-14 that it is exploring the possibility of updating the Commonwealth's Essential Health Benefits (EHB) benchmark plan. Since prior to the enactment of the Affordable Care Act (ACA), AHIP member health insurance providers have been offering comprehensive benefit packages that provide quality, affordable health care options in the commercial and employer markets. These comprehensive benefit packages became the basis for EHB.

While AHIP supports the concept of state flexibility to select a benchmark, we believe the EHB package must be affordable for small businesses and families and affordability should be the cornerstone of the Department's consideration. Ensuring coverage is affordable is critical to promoting the broad-based participation necessary to achieve the goal AHIP believes we share: providing affordable, high quality coverage.

The Notice specifically seeks input about "which benefits to potentially include in an updated EHB-benchmark plan." EHBs have demonstrated durability in a competitive marketplace with states having flexibility to modify benefits over time but taking minimal steps to do so. In fact, the trend among most other states that have utilized the greater flexibility granted by CMS via its Final 2019 Notice of Benefits and Payment Parameters (NBPP) under 45 CFR Sec. 156.111 has been to be very selective about additional benefits when updating their EHB benchmark plans. AHIP urges the Department to be similarly selective.

Workers and families obtaining health insurance coverage in the individual and small group markets are especially price sensitive, and the unilateral imposition of broad benefit packages often results in coverage becoming less affordable for small employers, individuals, and families, who are compelled to purchase coverage that may not align with their wants or needs.

Any additional costs will disproportionately be borne by individuals whose income is too high to qualify for current marketplace subsidies or those individuals purchasing coverage through Pennie and facing the potential end of enhanced financial subsidies should Congress not act to renew them prior to the 2026 coverage year. AHIP is equally concerned about price sensitivity in the small group market, as the ACA mandates that non-grandfathered individual and small-group health insurance plans cover EHB. The Department should be aware that this might force individuals to explore less comprehensive coverage alternatives, or even opt for no coverage due to concerns about affordability. It can also result in small employers opting instead for self-insurance, which is not subject to the requirement to provide EHB.

Beyond the cost impact, AHIP has longstanding concerns that states sometimes enact benefit mandates despite a lack of supporting medical evidence. AHIP supports an evidence-based and transparent process to guide the selection of any new benefits the Department may choose to include when updating

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Pennsylvania's EHB benchmark plan. This is critical to ensuring individuals receive high quality care through the coverage they purchase. Clear criteria, data, and public input processes – established before any selections are considered – are imperative, especially if the Department receives recommendations for numerous additions through this current public comment process.

The 2019 NBPP granted states additional flexibility but stated that benefits included in a state's new EHB benchmark plan will not be treated as state mandates for purposes of the ACA's defrayal requirements. However, as benefit mandates increase the cost of coverage, AHIP is concerned about the use of this new flexibility to avoid the defrayal requirement and would reiterate that the impact on the cost of insurance coverage is the same. Additional, broad-based mandates, whether implemented legislatively or through the EHB process, have the same impact, risking the affordability of health insurance coverage.

Lastly, we request the Department's commitment to making all comments submitted during this initial public input phase publicly available and in a timely fashion, prior to the selection of a new EHB benchmark plan and prior to the selection of an actuary that will perform the actuarial certification required by 45 CFR Sec. 156.111(e)(2). Transparency and inclusivity are pivotal for fostering trust and ensuring the interests of all stakeholders are appropriately considered.

We appreciate you taking our views into consideration. While we believe the legislature may be best suited to determine which benefits insurers should be required to cover, whether this is ultimately done by the legislature or by the Department via its proposed process to update the EHB benchmark plan, it is critical that a balance between comprehensiveness and affordability for consumers is prioritized.

If you have any questions, please contact me at klake@ahip.org or by phone at 220-212-8008.

Sincerely,

A handwritten signature in black ink that reads "Keith Lake". The signature is written in a cursive, slightly slanted style.

Keith Lake
Regional Director, State Affairs

AHIP is the national association whose members provide insurance coverage for health care and related services. Through these offerings, we improve and protect the health and financial security of consumers, families, businesses, communities, and the nation. We are committed to market-based solutions and public-private partnerships that improve affordability, value, access, and well-being for consumers.