July 10, 2024

Department of Managed Health Care
980 9th Street, Suite 500
Sacramento, CA 95814

RE: Comments on Updates to the Benchmark Plan of California's Essential Health Benefits

To Whom It May Concern:

The U.S. Pain Foundation (U.S. Pain) and its volunteer California Advocacy Team (CAT) are pleased to provide comments on the benefits that should be included in California's benchmark plan for Essential Health Benefits (EHBs).

U.S. Pain is a national non-profit 501(c)(3) organization created by people with pain for people with pain from various diseases, conditions, and serious injuries. The mission of the organization is to connect, support, educate, and advocate for those living with chronic pain, as well as their caregivers and healthcare providers.

Impact of Chronic Pain

Pain is the most common reason Americans access the health care system.

A study in the Centers for Disease Control and Prevention (CDC) *Morbidity and Mortality Weekly Report* dated April 14, 2023 reported that 51 million U.S. adults experienced chronic pain in 2021 and 17 million experienced high-impact chronic pain that interferes with a person's ability to function daily.[1] **In California, this translates to approximately 5.06 million California residents with chronic pain and 1.67 million with high-impact chronic pain.** High-impact chronic pain devastates a person's quality of life, negatively affecting all aspects of daily functioning, including sleep, work, social activities, and relationships.

Recommendations for Expansion of Essential Health Benefits

In 2018, the Secretary of the U.S. Department of Health and Human Services (HHS), Alex Azar, appointed a panel of the nation's foremost pain experts to serve on the HHS Pain Management Best Practices Inter-Agency Task Force mandated by Congress. U.S. Pain Foundation's Director of Policy and Advocacy, Cindy Steinberg, was the only patient and pain advocate appointed to the panel. A national leader in pain policy accomplishments, Steinberg is an advisor to CAT.

On May 9, 2019, the HHS released the Pain Management Best Practices Inter-Agency Task Force Report (HHS Task Force Report). Written by the 29 pain experts appointed by the Secretary with input from a broad group of representatives and stakeholders including 9,000 letters from the public, the report provided recommendations for best practices for managing acute and chronic pain for the nation. This final report was endorsed by more than 160 healthcare-related organizations.

Using the HHS Task Force Report findings as a guide, CAT presents the following recommendations for services to be included as EHBs in the updated benchmark plan. **These therapies should be made available to all pain patients as**

[1] Rikard, S. Michaela, et al. "Chronic Pain among Adults - United States, 2019–2021." Centers for Disease Control and Prevention, Centers for Disease Control and Prevention, 14 Apr. 2023, https://www.cdc.gov/mmwr/volumes/72/wr/pdfs/mm7215-H.pdf

medically prescribed and as part of a multidisciplinary treatment plan. There should be no arbitrary limits imposed on the number of treatments nor the types of therapeutic applications.

- **Complementary and Integrative Health**: "Clinical best practices may recommend a collaborative, multimodal, multidisciplinary patient-centered approach to treatment for various acute and chronic pain conditions to achieve optimal patient outcomes. For improved functionality, activities of daily living, and quality of life, clinicians are encouraged to consider and prioritize, when clinically indicated, nonpharmacologic approaches to pain management."[2]
    - Therefore, we request coverage for:
        - Acupuncture
        - Massage therapy
        - Chiropractic care
- **Restorative Therapies**: "Restorative therapies play a significant role in acute and chronic pain management, and positive clinical outcomes are more likely if restorative therapy is part of a multidisciplinary treatment plan following a comprehensive assessment. Use of restorative therapies is often challenged by incomplete or inconsistent reimbursement policies. Patient outcomes related to restorative and physical therapies tend to emphasize improvement in outcomes, but there is value in restorative therapies to help maintain functionality."[3]
    - Therefore, we request coverage for physical and occupational therapy for the ongoing treatment and stabilization of chronic pain. While these services are current EHBs, these treatments are often limited in number and application in health insurance plans.
- **Interventional Procedures**: These treatments "diagnose and treat pain with minimally invasive interventions that can eliminate pain and minimize the use of oral medications. These procedures include, but are not limited to: trigger point injections, joint injections, epidural steroid injections, radio-frequency ablation, cryo-neuroablation, neuromodulation, pain pumps, spinal cord stimulators, and others."[4]
    - It appears that the current EHB plan provides no information about insurance coverage of interventional procedures for spine, myofascial, and other conditions.
    - These treatments are standards of care for clinical pain management and should be available with coverage identified in health plans.
- **Behavioral Health Approaches**: "In recent decades, pain management experts have recognized the important relationship between pain and psychological health. Psychological factors can play an important role in an individual's experience and response to pain and can affect treatment adherence, pain chronicity, and disability status."[5]
    - Therefore, we request coverage for these treatments, including but not limited to, these common and effective therapies: Behavioral Therapy, Cognitive Behavioral Therapy, Acceptance and Commitment Therapy, Mindfulness based Stress Reduction, Emotional Awareness and Expression Therapy, Self Regulatory or Psychophysiological Approaches, such as biofeedback, relaxation training, or hypnotherapy.[6]
- **Durable Medical Equipment** : At a minimum, we request coverage of wheelchairs, walkers, canes, neuromodulators, TENS, and other medically necessary equipment.

For additional context and rationale, please review the information below which addresses chronic pain as a national

[2] U.S. Department of Health and Human Services (2019, May). Pain Management Best Practices Inter-Agency Task Force Report: Updates, Gaps, Inconsistencies, and Recommendations. Retrieved from U. S. Department of Health and Human Services website: https://www.hhs.gov/sites/default/files/pmtf-final-report-2019-05-23.pdf, Page 41
[3] Ibid., Page 31
[4] Ibid. Page 33
[5] Ibid., Page 37
[6] Ibid. Page 36

public health emergency as well as recent legislation emphasizing the critical need for comprehensive, multidisciplinary pain treatment plans.

A Public Health Emergency and Devastating Guidelines for Treatment

The opioid crisis began in 1990 when patient overdose deaths increased significantly. In 2016, the CDC published guidelines that recommended limits on the amount of opioid medication that could be prescribed to pain patients. The California Medical Board (the Board) followed with similar limitations. Physicians suddenly became fearful of scrutiny and began force-tapering pain patients off of their opioid medication, leaving many undertreated, experiencing serious withdrawal, worsening pain outcomes, overdosing on illegal drugs, and increasing the number of suicides. The Board also began a "death certificate" project in which death records were reviewed to investigate physicians who may have overprescribed opioids leading to death.

As a result, many California physicians became unwilling to treat chronic pain patients. In 2017, while the President of the United States declared the opioid crisis a public health emergency, he did not release funds to support effective solutions to this health emergency affecting millions of patients living with chronic pain.

Safer Treatment for Chronic Pain Patients Was Imperative

Recognizing the need for national advice regarding pain management, the U.S. Congress, in the Comprehensive Addiction and Recovery Act (CARA), directed the HHS Secretary to appoint a task force of the nation's foremost pain experts to report on the best way to manage pain, as noted above.

The HHS Task Force Report advised combining many different therapies from five broad areas called a multimodal integrative approach as best practice. The particular combination of treatments is different for each person with pain, so practitioners working with patients must develop individualized treatment plans. Consequently, individuals with pain need access to a broad range of treatments to see what works best for them.

California "Patients Bill of Rights"

In the 2021-2022 California legislative session, AB 2585 "Nonpharmacological Pain Management Treatment" was introduced and signed into law as CA Health & Safety Code (H&S) section 124962. The law promoted therapies for pain management treatment. Section 124962(b)[7] of the H&S Code refers to the HHS Task Force Report and identifies barriers to patient access to pain management treatment, including limited health insurance coverage. While this addition to California law encouraged the same treatment modalities recommended in the HHS Task Force Report, there was no mandate for insurance plans to cover these treatments. Physical therapy and acupuncture are EHBs, yet, patients have reported they experience strict limitations and exclusions from their insurance plans that are designed for acute pain recovery instead of chronic pain treatment.

California 2023 Revision of "Guidelines for Prescribing Controlled Substances for Pain"

In 2023, the California Medical Board (CMB) revised its guidelines for prescribing opiates to pain patients. The Board recognized that a change of tone was needed and physicians needed more autonomy in treating patients to provide individualized care. Indeed, in California alone, 29 pain management centers have closed, leaving 20,000 patients without care.[8] The Board recommended the following:

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[7] Cal. Health & Safety Code § 124960-124962.
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=124962.&lawCode=HSC
[8] Medical Board of California (2023). Guidelines for Prescribing Controlled Substances for Pain.
https://www.mbc.ca.gov/Download/Publications/pain-guidelines.pdf

> "Opioid medications should not be the first line of treatment for a patient with chronic pain. Other measures, including non-opioid therapeutic options, such as medications, restorative therapies, interventional approaches, behavioral health approaches, and complementary and integrative health approaches should be tried, and the outcomes of those therapies documented first. "

One of the CMB's goals was to provide resources to clinicians who treat chronic pain conditions. They identified the HHS Task Force Report as a resource for clinicians.[9] Yet, insurance coverage of a wide range of treatments remains limited.

Despite section 124962 to the CA H&S Code's "encouragement" of multimodal treatment for chronic pain and the CMB's 2023 Guidelines, chronic pain patients continue to lack appropriate coverage for the treatment of chronic pain conditions. Because insurance providers could, but were not required to cover recommended treatments, there is no evidence of expanded insurance coverage.

U.S. Pain Foundation and CAT thank the Department of Managed Health Care for considering our recommendations as the agency moves forward with this important work. We would be delighted to provide additional information and assist the Department's efforts in any way. Please contact Shelley Conger at sconger123@gmail.com or 747-248-9588 or any other members of the team listed below.

Sincerely,

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[9] Ibid, Page 7