July 23, 2010

Office of Consumer Information and Insurance Oversight
Department of Health and Human Services
Attention: OCIIO-9992-IFC
P.O. Box 8016
Baltimore, MD 21244-1850

Re: Response to Request for Comments, OCIIO-9992-IFC

To Whom it May Concern:

The State of Connecticut Office of the Healthcare Advocate ("OHA") offers its comments on the above-captioned interim-final rule--45 CFR § 147.30--on Section 1001 of the Patient Protection and Affordable Care Act of 2010 ("PPACA"), Public Law 111-148 (effective March 23, 2010), which created section 2713 of the Public Health Service Act. We acknowledge the well-intentioned efforts of the agencies to formulate a regulation consistent with the PPACA. OHA believes that the interim final rule for preventive health care services may create unintentional barriers to care and lessen efficiencies in the delivery of healthcare. We believe that the PPACA's clear statement that group health plans or issuers "shall not impose any cost sharing requirements for" services described therein, requires that regulations be more narrowly tailored than the interim-final rule to achieve the legislation's goal of ensuring access to preventive healthcare, reducing medical expenses and bringing down healthcare costs.

OHA is grateful to OCIIO for inviting public comment to aid in the development of regulations for section 2713. OHA's comments track the question numbers in the request for comments, whenever possible.

The interim final rules creates 45 CFR § 147.30. Our comments are as follows.

1. Subsection (a) of the regulation should state that plans "shall not" impose any cost-sharing.

Subsection (a) reads: "(a) Services—(1) In general. Beginning at the time described in paragraph (b) of this section, a group health plan, or a health insurance issuer offering group or individual health insurance coverage, must provide coverage for all of the following items and services, and **may not** impose any cost-sharing requirements (such as a copayment, coinsurance, or deductible) with respect to those items or services" **(emphasis added)**

The PPACA states that the entities **shall not** impose any cost sharing requirements for the listed services. We believe that the use of the words "shall not" was deliberative and designed to ensure that individuals receive access to the preventive healthcare services described in the PPACA and in the interim-final rule. The use of words "may not" conveys a different meaning from those used in the statute. We request that the agencies replace the words "may not" in subsection (a) with the words "shall not".

2. Subsection (a)(2) of 45 CFR 137.130 is drawn too narrowly to meet the requirement of the PPACA that cost sharing shall not be imposed for preventive services described therein. It creates unintentional barriers to access to care and may curb efficiencies in the delivery of care.

We understand the difficulty that the Departments face in crafting a rule that comports with the PPACA. Section 1001 of the PPACA is a difficult provision to interpret since the prohibition on cost sharing applies to preventive services, but not to visits to a provider that include preventive services. We think there is a more consumer-oriented approach to interpreting this provision that incorporates some of the language in the interim-final rule, but eliminates what could lead to barriers to access.

The best way to illustrate the unintended consequences of the interim final rule is to use the examples in the rule itself.

Example 1 states: "(i) Facts. An individual covered by a group health plan visits an in-network health care provider. While visiting the provider, the individual is screened for cholesterol abnormalities, which has in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force with respect to the individual. The provider bills the plan for an office visit and for the laboratory work of the cholesterol screening test.

(ii) Conclusion. In this Example 1, the plan may not impose any cost-sharing requirements with respect to the separately-billed laboratory work of the cholesterol screening test. Because the office visit is billed separately from the cholesterol screening test, the plan may impose cost-sharing requirements for the office visit."

We believe that this example misses the intent of the PPACA and the reality of medical practice in the United States. The use of the billing method is inconsistent with the goal of obtaining preventive services without burdensome cost sharing. First, it is regular practice for providers to order laboratory screenings, but only after seeing patients. The visit is integral to ordering a screening, since one cannot go straight to a laboratory for a screening test. Second, the visit with the provider may yield information that results in the ordering of a screening test, based on a patient's current condition, familial history, and a thorough evaluation of a patient that can only be done in an office visit setting. In other words, the screening blood test cannot be separated from the visit; the office visit is integral to the screening. The screening cannot happen without the office visit. In example 1, we believe there should be no cost sharing for the individual under any billing scenario.

Example 2 states: "(i) Facts. Same facts as Example 1. As the result of the screening, the individual is diagnosed with hyperlipidemia and is prescribed a course of treatment that is not included in the recommendations under paragraph (a)(1) of this section.

(ii) Conclusion. In this Example 2, because the treatment is not included in the recommendations under paragraph (a)(1) of this section, the plan is not prohibited from imposing cost-sharing requirements with respect to the treatment."

Example 2 is straightforward. The diagnosis of hyperlipidemia follows the screening test. On this follow-up visit, the prescribed treatment of is not a screening service, so cost sharing is not prohibited.

Example 3 states: "(i) Facts. An individual covered by a group health plan visits an in-network health care provider to discuss recurring abdominal pain. During the visit, the individual has a blood pressure screening, which has in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force with respect to the individual. The provider bills the plan for an office visit.

(ii) Conclusion. In this Example 3, the blood pressure screening is provided as part of an office visit for which the primary purpose was not to deliver items or services described in paragraph (a)(1) of this section. Therefore, the plan may impose a cost-sharing requirement for the office visit charge."

The preamble to the interim final rule states:

> "A second policy choice was if the preventive service is not billed separately from the office visit, whether these interim final regulations should prohibit cost sharing for any office visit in which any recommended preventive service was administered, or whether cost sharing should be prohibited only when the

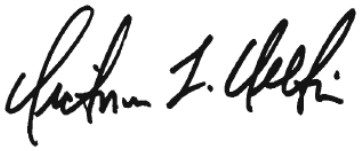
preventive service is the primary purpose of the office visit. Prohibiting cost sharing for office visits when any recommended preventive service is provided, regardless of the primary purpose of the visit, could lead to an overly broad application of these interim final regulations; for example, a person who sees a specialist for a particular condition could end up with a zero copayment simply because his or her blood pressure was taken as part of the office visit. This could create financial incentives for consumers to request preventive services at office visits that are intended for other purposes in order to avoid copayments and deductibles. The increased prevalence of the application of zero cost sharing would lead to increased premiums compared with the chosen option, without a meaningful additional gain in access to preventive services."

While there may be something to the theory in the preamble that more individuals will seek to obtain other medical services at a visit when they know that there will not be cost sharing because of a screening test that will occur, this does not necessarily lead to the conclusion that there would not be a "meaningful additional gain in access to preventive services." We argue that the opposite is true. The fact that preventive services can occur at the same time as other medical services will ensure two things: 1) that individuals actually receive their screening services, and 2) that the delivery system will become more efficient by reducing the number of medical visits. Prohibiting cost-sharing for these combined visits encourages well care visits. We believe the concerns raised in the interim-final rule are unpersuasive. If it in fact turns out that a person goes to the doctor for an unnecessary visit and is not due for any screenings, cost-sharing would be permissible. It is inconsistent with the PPACA, however, to permit mandatorily prohibited cost-sharing just because a needed screening is not the primary reason for a visit.

For example, a high blood pressure screening cannot be performed without an office visit. It is highly unlikely that an individual would go to a provider solely for a high blood pressure screening. High blood pressure screening and other screenings are often conducted when a patient visits a provider for some other reason, and the provider determines during the visit that the patient is due for screenings. In fact, that is the very scenario in Example 3 of the interim final rule. While section 2713 of the PHSA prohibits co-payments for preventive services, the rule frustrates this purpose by penalizing a patient who receives his screening at the same visit for other services. The "primary purpose test" created by the Departments for this interim-final rule, and used in Examples 3 and 4, unnecessarily complicate matters, requiring an interpretation of the motivation for a visit each and every time someone visits a provider. We believe that the better course, one that promotes efficiency in the delivery of preventive health services—reduction in the number of visits, combining preventive screenings with other visits when practical--comports with the PPACA's prohibition on cost-sharing for preventive healthcare services.

Thank you for your consideration of OHA's comments. You may direct any questions concerning these comments to me at victoria.veltri@ct.gov or at (860)297-3982.

Very truly yours,



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