

September 17, 2010

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

**File Code: OCIO-9992-IFC**

RE: Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services under the Patient Protection and Affordable Care Act.

Partnership for Prevention (Partnership) is pleased to submit these comments on the Interim Final Rules for Group Health Plans and Health Insurance Issuers relating to coverage of preventive services under the Patient Protection and Affordable Care Act (“the ACA”) —Public Law 111-148. Partnership is a non-profit, non-partisan member organization of leaders in business, health care, and government who are working to make evidence-based prevention an increased national priority.

Partnership is greatly concerned over the general lack of specificity in the Interim Final Rules regarding actual coverage requirements for each clinical service, educating providers and health plans on the new coverage and cost sharing requirements, and ensuring that recommended preventive services are provided to eligible persons confidentially. In the absence of additional guidance, the Interim Final Rules could have the unintended and undesirable effect of reducing the availability and utilization of critical clinical preventive services proven to save tens of thousands of lives and reduce health care costs. Partnership has long stressed the importance of high-value preventive care and believes that any effort to reform the nation’s health system should have greater use of evidence-based preventive services as a front-and-center goal. High-value preventive care includes those immunizations, disease screenings, and counseling services that, based on extensive research, produce the greatest health benefits and offer the best cost value.

To reach this goal, Partnership has advocated for health plans and private insurers to increase their coverage of recommended clinical preventive services. The sad fact is that high-value preventive care is widely underused, and as a result there are millions of people whose lives are shortened or who are unnecessarily sick, who are less productive than they would be otherwise, and who incur expensive medical costs. We are pleased

that the ACA expands coverage of preventive services of proven value to enable millions of Americans to live longer, healthier, and more fulfilling lives. It will also lead to more effective use of the nation's resources because the United States would get more value—in terms of premature death and illness avoided—for the dollars it spends on health care.

A discussion of our recommendations regarding Section 2713 of the Public Health Service Act (PHS Act) as added by the ACA is below.

### **Section 2713: Coverage of Preventive Health Services**

Coverage of clinical preventive services among group and individual private health insurance plans is sporadic. Most plans include at least some preventive services recommended by the USPSTF with a grade of A or B in their benefit package. Of covered services, the most common are screening procedures (e.g., mammography for breast cancer screening or colonoscopy for colorectal cancer screening). Less likely to be covered are counseling services (e.g., discussion of aspirin use for prevention of heart disease and stroke or tobacco cessation counseling). This has contributed to underutilization of these services. Analysis from Partnership's National Commission on Prevention Priorities (NCPP) has determined that increasing use of just these two high value preventive services has the potential to save nearly one hundred thousand lives.<sup>1</sup> Additionally, we agree that waiving the deductible for all A and B ranked preventive services and eliminating coinsurance of the services will increase the utilization of these services. The reduction in financial barriers associated with use of clinical preventive services will remove a disincentive for their use, particularly for low-income beneficiaries. The elimination of cost-sharing also helps end the confusion generated from the patchwork of coverage.

### **Partnership's Recommendations for Coverage of Preventive Services in Group Health Plans and Health Insurance Issuers Under the Patient Protection and Affordable Care Act**

The following are our three recommendations for coverage of preventive services in group health plans and health insurance issuers.

- 1) **The regulations should provide more detail on the actual coverage requirements for each clinical preventive service.**

Unfortunately, the regulations for coverage in the interim final rules are insufficient. The USPSTF grade A and B services are written and described in recommendation language, not coverage or benefit language. Therefore, the regulations should provide sufficient detail to guide plans in their development of preventive services benefits. Two specific examples demonstrate the need for translating recommendation language to benefit language. The USPSTF recommends aspirin use for the prevention of heart disease in men (age 45-79) and the prevention of stroke in woman (age 55-79) when the potential

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<sup>1</sup> National Commission on Prevention Priorities. *Preventive Care: A National Profile on Use, Disparities, and Health Benefits*. Partnership for Prevention, August 2007.

benefit outweighs the potential harm due to an increase in gastrointestinal hemorrhage.<sup>2</sup> Although this recommendation is understandable for providers, it is unclear how this service would be covered in a health plan. Would a plan benefit include aspirin counseling from a provider or even actual coverage of aspirin itself for those recommended to take it? These types of questions should be answered in the rules to provide guidance to plans. Partnership recommends that coverage of aspirin use include a counseling intervention based on a model of shared patient and provider decision-making that is suggested by the USPSTF as an approach to preference sensitive medical decisions.<sup>3</sup> A detailed description of an aspirin benefit based on the USPSTF recommendation and shared decision-making will lead to increased utilization and the potential of tens of thousands of lives saved each year.

A second example is tobacco cessation counseling and other interventions. The intent of the rules is to require the provision coverage of the USPSTF recommendations without cost sharing. This would include asking all adults about tobacco use and providing tobacco cessation interventions for those who use tobacco products. However, the rules do not include a description of the specific number or type of counseling sessions required, or what interventions should be covered (e.g. over-the-counter products, prescription medications).<sup>4</sup> The USPSTF emphasizes that combination therapy with counseling and medications is more effective at increasing cessation rates than either component alone.<sup>5</sup> We recommend that the Department of Health and Human Services (HHS) include language that makes this clear for the coverage of tobacco cessation by requiring the comprehensive tobacco cessation interventions, including prescription and out-the-counter medications, as defined by the *U.S. Public Health Services Guideline: Treating Tobacco Use and Dependence: 2008 Update*, upon which the USPSTF recommendation is based.

“Pharmacotherapy approved by the U.S. Food and Drug Administration and identified as effective for treating tobacco dependence in nonpregnant adults includes several forms of nicotine replacement therapy (gum, lozenge, transdermal patch, inhaler, and nasal spray), sustained-release bupropion, and varenicline”.<sup>6</sup>

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<sup>2</sup> *Aspirin for the Prevention of Cardiovascular Disease*, Topic Page. December 2009. U.S. Preventive Services Task Force. <http://www.uspreventiveservicestaskforce.org/uspstf/uspsasmi.htm>.

<sup>3</sup> U.S. Preventive Services Task Force. Shared decision making about screening and chemoprevention: a suggested approach from the U.S. Preventive Services Task Force. *Am J Prev Med* 2004; 26:56-66.

<sup>4</sup> *Counseling and Interventions to Prevent Tobacco Use and Tobacco-Caused Disease in Adults and Pregnant Women*, Topic Page. April 2009. U.S. Preventive Services Task Force. <http://www.uspreventiveservicestaskforce.org/uspstf/uspstbac2.htm>.

<sup>5</sup> U.S. Preventive Services Task Force. *Counseling and Interventions to Prevent Tobacco Use and Tobacco-Caused Disease in Adults and Pregnant Women: Reaffirmation Recommendation Statement*. AHRQ Publication No. 09-05131-EF-1, April 2009. <http://www.uspreventiveservicestaskforce.org/uspstf09/tobacco/tobaccors2.htm>.

<sup>6</sup> *Counseling and Interventions to Prevent Tobacco Use and Tobacco-Caused Disease in Adults and Pregnant Women: U.S. Preventive Services Task Force Reaffirmation Recommendation Statement* *Annals of Internal Medicine* *Ann Intern Med.* 2009;150:551-555 <http://www.annals.org/content/150/8/551.full.pdf>

Without specific coverage language, health plans may not completely cover the recommended preventive services as described by the USPSTF or may even cover a service that is not recommended based on the scientific evidence. Details regarding how each preventive service should be included in a health plan benefit package will ensure that the recommended services will be a floor for prevention coverage rather than a ceiling. Explicit guidelines will aid plans and issuers of insurance to offer the best coverage to save lives and provide value to the health care system. Therefore, Partnership recommends that HHS provide translation of the USPSTF recommendations to health insurance benefit language.

A good model for guidelines is *A Purchaser's Guide to Clinical Preventive Services: Moving Science into Coverage (Purchaser's Guide)* developed by the National Business Group on Health (NBGH) and the Centers for Disease Control and Prevention (CDC).<sup>7</sup> The Purchaser's Guide is a resource for employers (and health plans) on clinical preventive service benefit design. It includes the scientific evidence and detailed benefit language needed to implement comprehensive and structured clinical preventive service benefits for many of the USPSTF preventive services recommended with a grade of A or B. Specifically, it adapts these recommendations into condition specific summary plan description (SPD) language statements designed to assist benefits staff as they design benefit structures, discuss clinical preventive services with a healthcare consultant, or set coverage guidelines within a health plan.

2) **The Department of Health and Human Services (HHS) should educate both providers and health plans on the new coverage and cost-sharing requirements.**

Although most plans cover at least some clinical preventive services, the new requirements under the ACA go beyond current prevention practice in the health care system. For insurers to comply with the statute and clinicians to deliver the best quality services, it is vital for HHS to educate plans and health care providers about the new regulations. For example, we agree physician behavior plays a critical role in the decision to provide aspirin counseling or to refer patients to tobacco cessation or obesity counseling. In order to best achieve the goals of increasing utilization of recommended preventive services, we believe HHS should be proactive in promoting the availability and value of these services to clinicians and plans. Section 4004 of the ACA calls for the Secretary to undertake an "Education and Outreach Campaign Regarding Preventive Benefits." Part of this important congressionally mandated campaign includes the "importance of utilizing preventive services to promote wellness, reduce health disparities, and mitigate chronic disease."

We recommend that HHS work with entities such as the Health Professionals Roundtable (HPR) to create toolkits for healthcare providers that effectively promote appropriate

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<sup>7</sup> Campbell KP, Lanza A, Dixon R, Chattopadhyay S, Molinari N, Finch RA, editors. *A Purchasers Guide to Clinical Preventive Services: Moving Science into Coverage*. Washington, DC: National Business Group on Health; 2006

utilization and referral of clinical preventive services. These toolkits will be tailored to specific sectors of healthcare providers, for example MDs, RNs, and NPs, as well as health education professionals, such as obesity, nutrition, alcohol and tobacco cessation counselors.

**3) The Department of Health and Human Services should take steps to ensure that recommended preventive services are provided to eligible persons confidentially.**

We respectfully direct attention to our attached July 8, 2010 letter regarding the possible breach of confidentiality that may occur when an Explanation of Benefits (EOB) is issued to a policy holder. We previously submitted the letter to the Secretary, along with the American College of Obstetricians and Gynecologists, American Academy of Pediatrics and the Society of Adolescent Health and Medicine. The letter calls attention to a concern that “The interaction between federal and state confidentiality rules and state law requirements for health plans to issue EOBs often preclude provision of the confidential care that teens and young adults need.” This concern and potential conflict will increase as more adult children take advantage of the opportunity in the ACA to be included on a parent’s health policy until age 26. A number of options are available to address the EOB barrier to confidential services for adolescents and youth adults including:

- Eliminating the requirement to issue EOBs for all USPSTF recommended A and B preventive services;
- Excluding Chlamydia screening and other sensitive preventive services from EOB documents;
- Providing a simple procedure for healthcare providers to request that no EOB is issued to policy holders for sensitive services;
- Providing an EOB stating general medical services were rendered, but not providing specific details and thereby helping protect confidentiality.

## Conclusion

With the passage of the Affordable Care Act, we are now at a transformative time for health and healthcare in our country. An increase in the emphasis on promoting health and preventing disease in the general population is an important component of this transformation. However, appropriate implementation is vital. Clear guidelines should be provided to health plans and insurers for the appropriate coverage of clinical preventive services based on the recommendations of the US Preventive Services Task Force. The removal of barriers to the delivery of these preventive services will increase utilization. As a strong advocate for prevention, Partnership for Prevention believes that these new rules encourage our health care system to more fully embrace the power of prevention and improve the health of our nation.

We thank you for the opportunity to comment on the proposed rules for health plans and health insurance issuers relating to coverage of preventive services under the Affordable Care Act, and look forward to working with HHS to promote prevention and improve the health of all Americans.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Gould, PhD". The signature is fluid and cursive, with a large initial "R" and "G".

Robert J. Gould, PhD  
President and CEO  
Partnership for Prevention

Attachment: July 8, 2010 Letter to Honorable Kathleen Sebelius, "Ensuring confidential care to adolescents and young adults receiving U.S. Preventive Services Task Force preventive health services graded A or B."



July 8, 2010

The Honorable Kathleen Sebelius  
Secretary, Department of Health and Human Services  
HHS/OS/IOS  
Room 615-F  
200 Independence Avenue SW  
Washington, DC 20201

**RE: Ensuring confidential care to adolescents and young adults receiving U.S. Preventive Services Task Force (USPSTF) preventive health services graded A or B**

Dear Madame Secretary:

The undersigned organizations, which are among the members of the National Chlamydia Coalition, are seeking a solution to an existing barrier to delivery of the U.S. Preventive Services Task Force (USPSTF) A and B graded preventive health services for adolescents and young adults. We believe resolution can come from guidance or regulations being written to implement Section 2713 of the Public Health Service Act as amended by the Affordable Care Act.

As you know, the USPSTF recommends the following A and B graded services for adolescents and young adults and the Advisory Committee on Immunization Practice (ACIP) recommends the following immunizations:

<i>Screening or counseling service</i>	<i>For whom?</i>	<i>Grade</i>
Cervical cancer (Pap smear)	Sexually active females	A
Chlamydia	Sexually active females	A
Gonorrhea	Sexually active females	B
HIV	High risk for STDs	A
Syphilis	High risk for STDs	A
Tobacco use	All adolescents and adults	B
Depression	All adolescents and adults	B
Obesity	Children age 6+ and adults	B
Tdap, influenza, and meningococcal vaccine	Adolescents	NA
HPV vaccine	Adolescent females	NA

Source: Solberg et.al, Clinical Preventive Services for Adolescents, *AJPM*, Nov. 2009. See <http://www.ahrq.gov/clinic/uspstfix.htm> for details of the recommendations.

Patients reasonably expect confidentiality in the provision of these services. In Sexually Transmitted Disease (STD) clinics, Title X facilities, and other family planning clinics, STD screening is delivered confidentially. If these facilities or any health care provider seeks reimbursement from a commercial health plan, confidentiality may be at risk. Health plans are required to provide an Explanation of Benefits (EOB) detailing services provided to the policy holder, who is often a parent, and may also be a guardian or a spouse. Thus, the requirement to issue an EOB may inadvertently disclose an otherwise confidential service. Reports of, or bills for, services provided by laboratories may also disclose confidential services to the policy holder. Research over two decades has shown that privacy is a critical concern among teens and young adults as they seek health care, particularly services related to STDs, contraception, and sexual health. (Center for Adolescent Health and the Law, <http://www.cahl.org/web/index.php/publications/consent-confidentiality-protection>)

Medical associations, notably the American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, and the Society for Adolescent Health and Medicine, have issued policy statements and adopted guidelines for providing confidential care. Yet those who intend to provide high quality medical care face a variety of potentially competing laws and requirements. Confidential care is supported by the federal HIPAA privacy rules and myriad state privacy laws, as well as laws allowing minors to consent to health care. The interaction between federal and state confidentiality rules and state law requirements for health plans to issue EOBs often preclude provision of the confidential care that teens and young adults need.

Options for addressing the EOB barrier to confidential services for adolescents and young adults include:

- **Eliminating the requirement to issue EOBs for all USPSTF recommended A and B preventive services.** Given the provision in the health reform law that requires USPSTF A and B clinical preventive services to be offered at no cost to the patient or policy holder, EOBs for the provision of these services are unnecessary.
- **Excluding chlamydia screening and other sensitive preventive services from EOB documents.** Health plans can inform policy holders in their annual policy statement that in an effort to uphold confidentiality, information about certain sensitive services will not be included in an EOB.
- **Providing a simple procedure for healthcare providers to request that no EOB is issued to policy holders for sensitive services.** Health plans can allow health care providers to request an exemption from the requirement to send an EOB to the policy holder when billing for sensitive services.
- **Providing an EOB stating general medical services were rendered, but not providing specific details and thereby helping protect confidentiality.**

The efficacy and effectiveness of the USPSTF recommended services have been demonstrated and the potential for improving health and avoiding costly, preventable complications is clear. The advent of health reform offers an opportunity to eliminate challenging confidentiality barriers for teens and young adults receiving A and B graded services. This will benefit their health now and in the future.



We would be pleased to provide additional information. We can be reached via the National Chlamydia Coalition (NCC) by contacting Susan Maloney at Partnership for Prevention at [smaloney@prevent.org](mailto:smaloney@prevent.org) or 202-375-7809 (office) or 240-353-3900 (mobile).

Sincerely,  
Partnership for Prevention  
American Academy of Pediatrics  
American College of Obstetricians and Gynecologists  
Society for Adolescent Health and Medicine

Cc: Mayra Alvarez, MHA

*About the NCC: The National Chlamydia Coalition, convened and led by Partnership for Prevention, addresses the continued high burden of chlamydia infection, especially among women age 25 and under, and strives to attain the overarching mission of reducing the rates of chlamydia and its harmful effects among sexually active adolescents and young adults. The NCC is comprised of non-profit organizations, health care professional associations, advocacy groups, health insurers, and local, state, and federal government representatives. See [www.prevent.org/NCC](http://www.prevent.org/NCC) for more information.*