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The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Re: OCIO-9992-IFC, 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

Dear Secretary Sebelius:

The Healthcare Association of New York State (HANYs), the only statewide hospital and continuing care association in New York, representing more than 550 non-profit and public hospitals, nursing homes, home care agencies, and other health care organizations, submits this letter in response to the Department of Health and Human Services' (HHS) request for comments regarding *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 *Interim Final Rules* were published to implement Section 2713 of the Public Health Service Act, which generally prohibits group health plans and health insurance issuers from imposing cost-sharing requirements for preventive services. HANYs believes that coverage for basic preventive services like screening for blood pressure, cholesterol, cancer, sexually transmitted infections, adolescent and adult depression, autism, lead, and oral health; diabetes screening for hypertensive patients; genetic testing for the BRCA gene; and counseling related to aspirin use, tobacco cessation, and obesity is critical to providing early detection and treatment for costly chronic diseases.

HANYs applauds the HHS Secretary for mandating coverage for a broad array of preventive services, including evidence-based items or services rated "A" or "B" by the United States Preventive Services Task Force (45 CFR § 147.130(a)(1)(i)); immunizations for routine use in children, adolescents, and adults by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention (45 CFR § 147.130(a)(1)(ii)); preventive care and screenings for infants,

children, and adolescents as recommended by the Health Resources and Services Administration (HRSA) (45 CFR § 147.130(a)(1)(iii)); and preventive care and screenings for women as recommended by HRSA (45 CFR § 147.130(a)(1)(iv)).

However, we note that 45 CFR § 147.130(a)(3) does not require health insurance plans and issuers to cover preventive services when delivered out of network and allows cost-sharing to be imposed if preventive services are delivered by out-of-network providers. We urge you to take further action to ensure that preventive services are covered without cost-sharing requirements, regardless of the network status of the provider.

In addition, HANYS believes that 45 CFR § 147.130(a)(4) should provide additional guidance to help health insurance plans and issuers to determine the frequency, method, treatment, and setting for items or services for which coverage is mandated. The *Interim Final Rule* provides that a health insurance plan or issuer may use “reasonable medical management” to determine the appropriate standards for providing a preventive service. We believe that “reasonable medical management” should be explicitly defined in relation to evidence-informed medicine and not left to the judgment and inclination of payers.

We also respectfully suggest that precise guidelines be developed for value-based insurance designs (VBIDs) which are designed to align patient incentives with the clinical benefit of health services by reducing or eliminating patient cost-sharing requirements for those services that are likely to have the greatest clinical benefit, while requiring a patient fee for access to services judged to have less clinical value. We are concerned that unless the Secretary carefully issues guidance on VBIDs, health insurance plans and issuers may be tempted to steer patients and providers to choose lower-cost care options, without sufficient regard to quality outcomes.

In this regard, the New York Attorney General began an industry-wide investigation into physician ranking systems in 2007 because of concern that consumers were being steered to providers based on faulty data and may have been encouraged to choose physicians primarily based on cost, not quality of care. The Attorney General thereafter developed a *Model for Doctor Rankings* and reached settlements with seven health plans, all of which were required to sign on to the *Model* and revise their physician ranking systems.

The Model for Doctor Rankings requires health insurance plans and issuers to:

- ensure that rankings for doctors are not based solely on cost and clearly identify the degree to which any ranking is based on cost;

- use established national standards to measure quality and cost efficiency, including measures endorsed by the National Quality Forum and other generally accepted national standards;
- employ several measures to foster more accurate physician comparisons, including risk adjustment and valid sampling;
- disclose to consumers how the program is designed and how doctors are ranked, and provide a process for consumers to register complaints about the system;
- disclose to physicians how rankings are designed, and provide a process to appeal disputed ratings; and
- nominate and pay for a ratings examiner, subject to the approval of the Attorney General, who oversees compliance with all aspects of the new ranking model and reports to the Attorney General's office every six months.

Thoughtful guidance is necessary to protect consumers from flawed insurance designs that have in the past placed more emphasis on managing cost than on managing quality of care. Therefore, HANYS urges the Secretary to provide additional guidance like the *Model for Doctor Rankings* to help ensure that unbiased and transparent clinical judgment is the cornerstone of the determination process in choosing appropriate medical care for consumers.

If you have questions about our comments, contact Jeffrey Gold, Vice President, Managed Care and Special Counsel, at (518) 431-7730.

Sincerely,



Daniel Sisto
President

DS:dd