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September 17, 2010

Mr. Jim Mayhew

Office of Consumer Information and Insurance Oversight

Department of Health & Human Services

Attention: OCIO-9992-IFC

P.O. Box 8016

Baltimore, MD 21244-1850

Electronic Submission, [regulations.gov](http://regulations.gov)

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Re: Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services

Dear Mr. Mayhew:

The Bazelon Center for Mental Health Law—a national legal-advocacy organization representing children and adults with mental illnesses—is pleased to submit the following 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. We appreciate the opportunity to provide feedback on these important regulations.

General Comments

The Bazelon Center strongly supports the Departments' efforts to provide robust regulations that ensure the protection of health insurance consumers and access to high quality, affordable preventive care. Section 2713 of the Affordable Care Act requires health insurers to provide, with no cost-sharing, access to a range of preventive health services for children and adults.

Preventive health services are vital for people with mental illnesses and substance use disorders, who are often at higher risk for developing chronic physical health conditions in addition to their psychiatric disorder. Early identification of both health and mental health problems allows for early intervention, which can effectively reduce the burden of disease on individuals, their families and communities. Research indicates that co-payments deter people from seeking preventive care and present particular challenges for people with little discretionary income; including those with mental illnesses. Therefore, we believe that the interim final regulations

represent a significant step forward for health care consumers— particularly those with mental illnesses.

### Additional Comments

The Bazelon Center would like to submit additional recommendations to further strengthen the interim final regulations regarding the following:

- I. Recognition of Preventive Mental Health Services
- II. Frequency of Screenings and Services
- III. Inclusion of Additional Evidence-Based Preventive Services
- IV. Revision of Certain Interim Final Rule Provisions
- V. Ensure Opportunities for Education and Compliance

### **Recognition of Preventive Mental Health Services**

We applaud the Departments for reinforcing the ACA provisions that clearly include a number of preventive services for mental health and substance use disorders as covered reimbursable services. The following screenings and interventions have been identified as effective by the U.S. Preventative Task Force and are, therefore, included under the law:

- Alcohol misuse screening and counseling for adults;
- Depression screening for adolescents and adults; and
- Tobacco use counseling for adults and interventions for pregnant women.

Preventive services covered by Section 2713 of the ACA also comprise a number of effective preventive mental health services for children and adolescents that are identified in the Health Resource Services Administration's (HRSA) comprehensive preventive guidelines. Services identified by HRSA that are reimbursable covered preventive services under the ACA include:

- Developmental screenings for infants and young children;
- Psychosocial/behavioral assessments for all children;
- Early childhood autism screenings;
- Developmental surveillance for all children; and
- Alcohol and drug use screenings for children and assessments for adolescents.

We ask that the Departments reiterate to health insurers that the above-listed mental health screenings and assessments are preventive services covered under the ACA.

We also encourage the Departments to make certain that the primary care providers that will be providing these critically important services receive adequate education and training on mental health and substance use disorders, effective screening and assessment tools, treatment, and recovery. This includes providers in juvenile justice facilities, schools and other settings where mental health prevention services are particularly essential and implemented. It is also extremely important that primary care professionals are provided with training on and resources for

referring individuals with mental health and/or substance use disorders that require more intensive services to providers of treatment, rehabilitation and/or recovery support services in their communities.

### **Frequency of Screenings and Services**

We urge the Departments to encourage the U.S. Preventive Services Task Force to convene and consider the evidence regarding additional effective mental health preventive services that are not yet required as reimbursable services. A service that may be considered, for example, is suicide screening in adults. Given the low risk and low cost of screening for mental illness, and the current state of knowledge about the consequences of untreated addiction and mental illness, the harms associated with not screening or providing other preventive services are too severe to be ignored. Therefore, covered screenings and services should include the full range of mental health and substance use preventive services that have clearly demonstrated effectiveness.

### **Inclusion of Additional Evidence-Based Preventive Services**

We also encourage the Departments to ensure that the USPSTF evaluates promising practices as they arise and revises the list of covered services when warranted. Promising approaches to early screening and services for schizophrenia and a number of other mental disorders have either been developed or are under development and warrant consideration by the Task Force. Additionally, we recommend that the Departments ensure that final regulations clearly outline a timeline for requiring health plans to incorporate recommended services as they are identified by the USPSTF.

### **Revision of Certain Interim Final Rule Provisions**

We urge the Departments to reconsider several provisions within the proposed regulations that may prove particularly burdensome for people with mental illnesses. The interim final regulations allow insurers to impose cost-sharing for otherwise covered preventive services if the preventive service is not the primary purpose of the visit. With substance use disorders and mental health screenings in particular, it is critically important that no-cost screenings be allowed during visits for other primary care services, since individuals most in need of mental health and addiction screenings are often less likely to seek them out on their own. We encourage the Departments to reconsider the provision that allows cost-sharing to be imposed if a preventive service is billed separately from the office visit.

Additionally, the limited number of providers that are available to screen or provide other preventive services for individuals for mental illnesses is of concern. In order to expand access to preventive services, we urge the Departments to require that plans allow out-of-network providers to conduct preventive screens without cost-sharing obligations if no in-network provider is reasonably available to provide those services, particularly in rural and other underserved areas.

In several instances, guidelines offered by the USPSTF are silent regarding the recommended frequency of the identified screening or service. When this is the case, the interim rules allow

health plans to set limits based on “reasonable medical management techniques.” However, the regulations fail to define or describe the scope of such reasonable medical management techniques. We recommend that the Departments offer additional guidance that clearly defines the term. We also urge such guidance to ensure that plans use and publicly identify a credible reference/source in making such determinations (such as but not limited to the Millman Care Guidelines; [www.careguidelines.com](http://www.careguidelines.com)), as well as ensure that plan enrollees are provided with the right to appeal such determinations to both their plan and appropriate oversight agency.

### **Ensure Opportunities for Education and Compliance**

To ensure that the new prevention requirements are successful and that consumers benefit fully from these protections, it is important for the Departments to recognize the need for strong consumer, family and provider outreach and education efforts. The regulations governing coverage of preventive services under the ACA should include a discussion of the outreach effort needed to inform and educate consumers and providers about the specific provisions and requirements of the law.

We also encourage the Departments to promulgate further guidance regarding the monitoring of health plans for violations of the prohibitions and restrictions set forth in these Interim Final Regulations. There is a great need for a strong, well-defined mechanism for enforcement and oversight of plans, and we suggest that additional guidance be included to describe such a mechanism. The regulations should also clarify who may submit challenges to a plan’s adherence to these regulations (whether it be consumers, providers, state agencies, or advocacy organizations), as well as what entity will be responsible for reviewing such claims.

We thank you again for the opportunity to comment on these regulations and appreciate your consideration of our proposed recommendations. We welcome the opportunity to discuss any of these thoughts in greater detail. Please contact Allison Wishon Siegwarth at 202-467-5730 x 113 or [allisonw@bazelon.org](mailto:allisonw@bazelon.org) for additional information or further clarification.

Sincerely,

Chris Koyanagi  
Policy Director