

PUBLIC SUBMISSION

As of: September 20, 2010
Received: September 17, 2010
Status: Posted
Posted: September 20, 2010
Tracking No.: 80b51f3c
Comments Due: September 17, 2010
Submission Type: Web

Docket: IRS-2010-0017

Requirement for Group Health Plans and Health Insurance Issuers to Provide Coverage of Preventive Services under the Patient Protection and Affordable Care Act

Comment On: IRS-2010-0017-0002

Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services; etc.

Document: IRS-2010-0017-0020

Comment on FR Doc # 2010-17242

Submitter Information

Name: Tim Nanof

Address:

4720 Montgomery Lane

Bethesda, MD, 20824

Email: tnanof@aota.org

Phone: 301-652-6611

Organization: American Occupational Therapy Association

General Comment

Prevention Comments Final

Attachments

IRS-2010-0017-0020.1: Comment on FR Doc # 2010-17242

September 17, 2010

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

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration, Room N-5653
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Attention: RIN 1210-AB44

Internal Revenue Service
CC: PA: LPD: PR, (REG-120391-10)
Room 5025
P.O. Box 7604 Ben Franklin Station
Washington, DC 20044
Attention: REG 120391-10

**RE: AOTA Comments on 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 (File
Code OCIO-9992-IFC/RIN 1210-AB44/REG-120391-10)**

Dear Sir or Madam:

The American Occupational Therapy Association (AOTA), the national professional association representing the interests of more than 140,000 occupational therapy practitioners appreciates the opportunity to comment on the interim final rules that implement provisions of the Patient Protection and Affordable Care Act (P.L. 111-148) regarding coverage of preventive services. AOTA strongly supports coverage of preventive services with no cost sharing for beneficiaries and believes that the elimination of cost sharing for preventative services demonstrates a commitment to reducing injury, illness, disability and secondary disability for the American public and promoting healthy quality of life. In addition, an increased emphasis on prevention changes the focus of health care from exclusively treating conditions to a focus on health promotion that will reduce health care costs and improve quality of life.

We provide the following comments so that the Departments can strengthen the interim final rules.

The Key Role of Occupational Therapy in Prevention

Occupational therapy is a health, wellness and rehabilitation profession dedicated to the maximization of performance and function so that individuals can live life to its fullest. Occupational therapy practitioners take a holistic approach to health care that is particularly useful in the areas of wellness, health promotion and prevention. Occupational therapy practitioners work with individuals across the lifespan to address injury, illness, developmental delays or behavioral or cognitive impairments regardless of the cause. Occupational

therapy interventions range from classic medical procedures related to acute care to lifestyle change and environmental modifications that can prevent injury and illness as well as promote health and quality of life.

Because of occupational therapy's broad clinical knowledge base and holistic approach occupational therapy practitioners are invaluable in addressing prevention of injury, illness and disability as well as preventing secondary disability as well as promoting optimum management of chronic conditions. For example:

- Occupational therapy practitioners work with adults on many of the conditions focused on in "preventive services", such as hypertension, substance abuse, mental health, and obesity. In addition, they develop injury prevention programs for adult workers. Each of these play a key role in assisting individuals to move toward healthier and safer lifestyles, as well as helping to decrease the chance of illness, injury, and loss of work, school or other productive time. Occupational therapy has been proven to assist older adults to maintain function and even reduce levels of decline in health indicators. Occupational therapy's focus on psychological and social well being contributes to mental health and to continued successful engagement in meaningful occupation and roles. ^{i ii}
- Occupational therapy has a great deal to offer on the management of chronic diseases. Practitioners work to address problems associated with specific chronic conditions (such as cancer, stroke, osteoporosis, various injuries, and carpal tunnel syndrome), thus helping people to sustain current abilities. They help workers by developing individualized adaptations that allow them to cope with physical demands, reduce fatigue, relieve stress, and cope with and manage pain. A major focus of the efforts of occupational therapy practitioners is to help people learn and incorporate health management tasks into their daily life routine. They also work to adapt tasks and environments to fit changing abilities so that individuals continue to be productive. ^{iii iv}
- In addition, occupational therapy practitioners work with children and adolescents in a variety of areas. These are critical efforts considering that additional children now will have access to health care coverage because of the prohibition of pre-existing condition exclusions. OTs focus on developmental and behavioral issues, physical disabilities, sensory disabilities, and chronic health conditions. One issue which is getting a great deal of attention is Autism Spectrum Disorders (ASD). This is of particular importance as more and more states have mandated coverage for ASD. In relation to ASD, OT services help enhance participation in and performance of activities of daily living (e.g., feeding, dressing), instrumental activities of daily living (e.g., community mobility, safety procedures), education, work, leisure, play, and social participation. Like other OT services, the supports provided to an individual with ASD are defined according to the individual's needs and can help a child, adolescent or adult to live a more productive life in his/her community. ^v

Definition and Scope of Preventive Services

Prevention is a broad area and while the PPACA's approach to restrict the imposition of co-payments, etc., to certain preventive services, the importance of a prevention perspective to all services is critical. AOTA urges the Department to promote the understanding among consumers, providers, professionals and health plans that beyond the services afforded the "no co-pay" status, all services should be provided that can have a preventive benefit.

According to statute, plans must provide coverage for all of the following items and services and plans may not impose any cost-sharing requirements (co-payment, co-insurance, or deductibles) related to those services.

- Evidence-based items or services that have in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force <http://www.uspreventiveservicestaskforce.org/>.
- Immunizations for routine use in children, adolescents, and adults that have in effect a recommendation of the Centers for Disease (CDC) Control Advisory Committee on Immunization Practices <http://www.cdc.gov/vaccines/recs/acip/default.htm>

- Evidence informed preventive care and screenings for infants, children, and adolescents which are provided for in comprehensive guidelines supported by the Health Resources and Services Administration (HRSA) <http://mchb.hrsa.gov/programs/training/brightfutures.htm>. These “Bright Futures” guidelines were developed in collaboration with the American Academy of Pediatrics (AAP) and detailed information is available at <http://brightfutures.aap.org/>.
- Evidence informed preventive care and screenings for women supported by HRSA <http://mchb.hrsa.gov/whusa09/hsu/pages/305pc.html>.

While AOTA supports the requirement to provide these services at no cost and welcomes the resulting expanded access to preventive services, we are concerned about too severely limiting preventive services to those that have been evaluated and rated by U.S. Preventive Services Task Force (USPSTF), the Centers for Disease (CDC) Control Advisory Committee on Immunization Practices, and the Health Resources and Services Administration (HRSA). In order to be more effective there must be a lifestyle and function component to preventive services that will allow individuals with and without disabilities and chronic conditions to access services that maintain independent, productive, healthy lives.

Disability advocates have long proposed a broad definition of “medical necessity”—one that recognizes the value of maintenance of function and not only improvement. If this prevention initiative is to be effective in the long run in helping people with disabilities and chronic conditions a broader recognition and definition of preventive services and medical necessity to encompass maintenance of function and prevention of secondary disabilities is critical. The following definition of medical necessity, initially promoted by the Consortium for Citizens with Disabilities (CCD) should be applied to the preventive services initiative.

The CCD believes that a federal definition of medical necessity should require plans to cover services that are: calculated to prevent, diagnose, correct, or ameliorate a physical or mental condition that threatens life, causes pain or suffering, or results in illness, disability, or infirmity; calculated to maintain or preclude deterioration of health or functional ability; individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness, disability, or injury under treatment; not in excess of the individual's needs; necessary and consistent with generally accepted professional medical standards as determined by the Secretary of Health and Human Services or the state Department of Health; and reflective of the level of service that can be safely provided and for which no equally effective treatment is available.

High Risk Populations Including Individuals with Disabilities and Chronic Conditions

While some USPSTF recommendations address screenings for high risk populations, others do not. In the case where the USPSTF recommendation is silent as to high-risk populations, and a health care provider recommends more frequent screenings than the USPSTF for a high risk patient, the health care provider recommendation should guide the health plan in such circumstances and the individual should be eligible for additional no-cost screenings. When a physician has recommended the increased screening due to higher risk, that patient should receive those screenings with no additional cost sharing.

For patients with certain chronic conditions, screenings are used as a form of disease monitoring, but for others with chronic conditions who are at higher risk for certain preventable conditions, screenings are a crucial prevention tool and essential to reducing secondary disability. The final regulations should clarify and distinguish the two types of screenings for patients with chronic conditions: ensuring that additional screenings to prevent secondary disability are covered at no cost when recommended by a physician, consistent with our recommendation for high risk populations as provided above.

Clarification is Needed Regarding Services Not Recommended by USPSTF and Those Not Yet Evaluated by USPSFT

The statute provides, and the regulations reflect, that plans are allowed to deny coverage with no co-payment, etc., for services that are “not recommended” by the Task Force – but this is not defined. We are concerned that this would inadvertently give plans express permission to deny coverage altogether for screenings that are simply not addressed by the USPSTF. The final regulations should be clarified to state that “not recommended” by the USPSTF means those services receiving a “grade D” from the Task Force. Services receiving a grade D, by definition, means “(t)he USPSTF recommends against the service.” Many occupational therapy interventions with demonstrated effectiveness such as falls prevention have yet to be evaluated by the USPSTF and would not be included in the list of required services, resulting in lost opportunities to prevent certain injuries, illnesses and both the primary and secondary disabilities and conditions that they can cause. The USPSTF is expected to present recommendations on falls prevention in the near future. The regulations should clearly state a timeline for requiring health plans to incorporate additional recommended services as they are identified by the USPSTF.

Value Based Insurance Design (VBID)

According to statutory intent regulations defining VBID should make it clear that the program must be aimed at improving health outcomes and increasing quality of care. A program that aims to reduce costs by limiting services or access is not a value-based program and the guidance provided to plans should emphasize this.

Notice to Beneficiaries

Coverage of preventive services is an important new protection for many insurance plan enrollees. Accordingly, clear notice should be provided to plan enrollees about no-cost sharing for recommended preventive screenings and services. Specific notice should be provided regarding preventive services available to high risk populations including individuals with disabilities and chronic conditions. To ensure standardization, HHS and DOL should provide a form for plans to use.

Monitoring and Enforcement

The success of the prevention initiative relies heavily upon the effectiveness of monitoring and enforcement of these rules. Final regulations must clearly address monitoring and enforcement including specific appeal rights, and remedies. Furthermore, the regulations should provide for the Departments (HHS and DOL) to exercise oversight over plan compliance with these regulations complete with enforcement capability.

Conclusion

AOTA believes the interim final rules are a significant step forward for persons with disabilities and chronic conditions. Nonetheless, we believe that the rules could be further strengthened in significant ways. If you have any questions, please feel free to contact AOTA Federal Affairs Department directly at fad@aota.org. Thank you for your consideration of our comments.

Sincerely:

Tim Nanof
Federal Affairs Manager
American Occupational Therapy Association
tnanof@aota.org

ⁱ *Occupational Therapy Services in Promotion of Psychological and Social Aspects of Mental Health.*

ⁱⁱ *AOTA Obesity Position Paper.*

ⁱⁱⁱ *Occupational Therapy's Role in Health Promotion.*

^{iv} *The Role of Occupational Therapy in Chronic Disease Management.*

^v AOTA's "Autism Site" (www.aota.org/Practitioners/PracticeAreas/Pediatrics/Browse/Autism.aspx.)