September 15, 2010

To: Departments of Treasury, Labor, and Health and Human Services

From: Robert Howard, RD, LCDN (NYS license # 000280)

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

Specific Re: USPSTF Recommendation: Counseling for Diet

Text of USPSTF Recommendation: "The USPSTF recommends intensive behavioral counseling for adult persons with hyperlipidemia and other known risk factors for cardiovascular and diet related chronic disease. Intensive counseling can be delivered by primary care clinicians or by referral to other specialists, such as nutritionists or dietitians."

Issue: Do health plans have the option of providing this service only by primary care clinicians, or must they also provide the service by nutritionists or dietitians to whom the service may be referred (so long as the nutritionist or dietitian is in-network for the plan)?

Background: I am a registered dietitian and New York State licensed certified dietitian-nutritionist in practice for 16 years in New York City. I am an in-network provider for Medicare and over a dozen health plans.

Problem: The majority of health plans for which I am a provider already cover this preventive service, but a significant number of group and individual policies do not consider registered dietitians, or licensed certified dietitian-nutritionists, plan providers under the specific health insurance policy. So while the service is covered, and I am in-network, the health insurance policy will not reimburse me for these services even if referred to me by an in-network physician.

This is a barrier to access to care, and is neither clinically effective nor cost effective.

On January 1, 2000 the Institute of Medicine published "The Role of Nutrition in Maintaining Health in the Nation's Elderly". The genesis of this report is stated at page 2: "In addition to the recent coverage for diabetes education, the Balanced Budget Act of 1997 also required that the Department of Health and Human Services contract with the National Academy of Sciences, Institute of Medicine to examine the benefits and costs associated with extending Medicare coverage for certain preventive and other services. The services specifically targeted for examination included screening for skin cancer; medically necessary dental services; elimination of time restrictions on coverage for immunosuppressant drugs after transplants; routine patient care for beneficiaries enrolled in clinical trials; and nutrition therapy, including services of a registered dietitian. This [Institute of Medicine] report addresses the benefits and costs associated with extending Medicare coverage specifically for nutrition therapy."

Page 267 of the Institute of Medicine report found that the delivery of diet counseling is most clinically effective when delivered by a registered dietitian (parenthetical references omitted): "Patients generally consider their physician to be a highly credible source of health and dietary information; however, the debate over whether physicians have the time or skills to provide nutrition counseling has been a long one….In 1985, a report by the National Research Council described inadequacies in the curricula of medical schools and in physicians' knowledge, attitudes, and health care practices related to nutrition. Others have since described a modest growth in physicians' training in applied nutrition, but continue to acknowledge discrepancies between knowledge and actual practice….In 1995, the U.S. Preventive Services Task Force found that 'although physicians can often provide general guidelines on proper nutrition, many lack the time and skills to obtain a thorough dietary history, to address potential barriers to changes in eating habits, and to offer specific guidance on food selection.' In addition, the Task Force rated the quality and strength of evidence regarding the effectiveness of both primary care clinicians and specially trained educators in counseling to change dietary habits….Hence this [Institute of Medicine] report rates dietary counseling performed by a trained educator such as a dietitian as more effective than by a primary care clinician."

And at page 271: "The dietitian has strong academic and clinical training in nutrition science, food science, nutrient composition of foods, and behavior change. This health professional is also the most knowledgeable about strengths and limitations of methods used to determine nutrient composition of foods and dietary intake....The registered dietitian is currently the single identifiable group of health care professionals with the standardized education, clinical training, continuing education, and national credentialing requirements necessary to provide nutrition therapy."

As to cost, dietitians are paid less than physicians for providing the service. Under Section 105 of the Medicare Benefits and Improvements Act passed in December, 2000, dietitians became eligible Medicare providers beginning in 2002. Under that statute compensation for dietitians was fixed at 85% of what a physician would be paid for furnishing the same service. This compensation section is now codified as Section 1861(a)(1)(T) of the Social Security Act.

Compensation by private plans often follows Medicare's scheme, and as a provider for over a dozen private plans, I can attest that these private plans also pay less to dietitians than to physicians for this service. I have been active state-wide and nationally in reimbursement issues for my profession and I can also attest that I am uniformly told that in other parts of the country compensation is less for dietitians than for physicians in providing this service.

A thorough reading of the USPSTF Counseling for Diet recommendations and rationale, clinical considerations, scientific evidence, discussion, and recommendations of others, makes it clear that the USPSTF intends the subordinate clause "or by referral to other specialists" to mean that dietary counseling should be available by <u>both</u> primary care clinicians <u>and</u> other specialists, including nutritionists and dietitians. For example, the second bullet point under Clinical Considerations describes the dietary interventions with reference to the 5-A behavioral counseling framework:

"Assess dietary practices and related risk factors.
Advise to change dietary practices.
Agree on individual diet change goals.
Assist to change dietary practices or address motivational barriers.
Arrange regular followup and support or refer to more intensive behavioral nutritional counseling (e.g., medical nutrition therapy) if needed."

Summary: The intent of the Patient Protection and Affordable Care Act is to improve care and lower costs, and it is more clinically effective and cost effective to allow the service to be provided by dietitians and nutritionists. Also, the USPSTF document itself makes it clear that the USPSTF intends that dietary counseling should be available by both primary care clinicians and other specialists, including nutritionists and dietitians.

My Recommendation: Clarify that health plans must provide diet counseling services by both primary care clinicians and other specialists, including nutritionists or dietitians to whom the service may be referred (so long as the nutritionist or dietitian is in-network for the plan).

Thank you for your consideration of this important issue.

Sincerely,

Robert Howard, RD, LCDN