National Alliance on Mental Illness

September 17, 2010

Office of Consumer Information and Insurance Oversight
Department of Health and Human Services
Attention: OCIIO-9992-IFC
P.O. 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: 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 OCIIO-9992-IFC/RIN 1210-AB44/REG–120391-10)

Dear Sir or Madam:

On behalf of the National Alliance on Mental Illness (NAMI) I am writing to offer the following comments to the Departments of Labor, Health and Human Services, and the Treasury (the Departments) regarding the interim final rule on coverage of preventive services under the *Patient Protection and Affordable Care Act* (ACA). In addition to submitting the following comments, NAMI is also endorsing separate comments that have been submitted by the Whole Health Campaign (WHC) and the Consortium for Citizens with Disabilities (CCD). NAMI is the nation's largest organization representing children and adults living with mental illness and their families. NAMI appreciates the opportunity to submit comments on the interim final rule on coverage of preventive services.

Under Section 2713 of the ACA, health insurers are required to provide, with no cost-sharing, access to a range of preventive health services, including critically important mental health and substance use services for children and adults. Improving access to preventive care has the potential to greatly improve the health of both children and adults living with mental illness.

As the Departments work to implement the Section 2713 of the ACA, the undersigned organizations urge you to ensure that the Final Rules for Group Health Plans and Health

Insurance Issuers Relating to Coverage of Preventive Services under the Patient Protection and Affordable Care Act to:

1. Ensure that the appropriate steps are taken to educate the public, service providers, and insurers so they understand the new requirements, and implement strong enforcement mechanisms to ensure compliance;
2. Maintain the explicit recognition of certain preventive interventions and evidence-based screening tools that are included as covered preventive services under the ACA and encourage the U.S. Preventive Services Task Force to convene to consider evidence of effectiveness for additional substance use and mental health preventive services not yet required as reimbursable services;
3. Revise provisions of the Interim Final Rule that would make accessing the preventive services benefits of Section 2713 disproportionately burdensome for people with mental health and/or substance use disorders;
4. Provide additional guidance with respect to frequency of recommended screenings,
5. Address the needs of high risk populations, including individuals living with serious mental illnesses and/or other chronic conditions;
6. Clarify the status of services not recommended by USPSTF and those not yet evaluated by USPSFT;
7. Require notice to plan beneficiaries; and
8. Promote monitoring and enforcement.

1. Ensure that the appropriate steps are taken to educate the public, service providers, and insurers so they understand the new requirements, and implement strong enforcement mechanisms to ensure compliance.

In order to maximize success of the new prevention benefits and improve public health, it is important for the Departments to recognize the need for strong consumer, family, and provider outreach and education efforts to help them to understand and utilize the new benefits. 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. The Departments should also recognize the need for strong enforcement mechanisms to ensure compliance.

In addition, NAMI recommends that the Departments place particular emphasis on outreach and education efforts targeted to populations and communities that currently lack access to basic primary health care services. Adults living with serious mental illness certainly fall into this category. A 2006 study by the National Association of State Mental Health Program Directors (NASMHPD) documents the disturbing incidence of medical co-morbidities experienced by non-elderly adults served in the public mental health system.

These medical co-morbidities include obesity, diabetes, heart disease, pulmonary disorders, asthma, etc. and very limited access to basic primary health, early intervention and preventive services to address these conditions. Expanded access to preventive services under the ACA must address the needs of these most vulnerable Americans.

2. Maintain the explicit recognition of certain preventive interventions and evidence-based screening tools that are included as covered preventive services under the ACA and

encourage the U.S. Preventive Services Task Force to convene to consider evidence of effectiveness for additional substance use and mental health preventive services not yet required as reimbursable services

NAMI is pleased that, under the ACA, a number of preventive services for mental illness health and substance use disorders are clearly included as covered reimbursable services. These include the following screenings and interventions that have been identified as effective by the U.S. Preventative Task Force:

- 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 include a number of effective mental health and substance use preventive services for children and adolescents 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:

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

The Departments need to make clear to health insurers that the above-listed mental health and substance use screenings and assessments are covered preventive services under the ACA.

In addition, the primary care workforces that will be providing these critically important services need to receive training on mental illness and substance use conditions. Primary care professionals conducting these preventive services need to receive adequate education about and training on mental illness and substance use disorders, effective screening and assessment tools, treatment, and recovery. This includes not just providers in traditional primary care settings, but also those in schools, juvenile justice facilities, and other primary care settings where prevention services related to mental illness are especially needed. It is also extremely important that primary care professionals are given guidance on the primary health care needs of individuals living with serious mental illness.

In addition to those mental health and substance use screenings that are explicitly covered preventive services under the ACA, there are additional preventive screenings for substance use and mental health conditions that have been used for a number of years and are extremely effective. NAMI would also recommend inclusion of coverage for suicide screening in adults. Screenings for suicide ideations have been used for a number of years and have been effective tools to help identify many youth and adults in need of services. Under the ACA, those screening procedures for adults would not be required cost-free services despite evidence of effectiveness.

Given the low risk and low cost of screening for substance use and mental illness, and the current state of knowledge about the consequences of untreated addiction and mental illness, the harms associated with not screening are too severe to be ignored. Therefore, covered screenings should

include the full range of mental health and substance use preventive services that have demonstrated clear effectiveness.

3. Revise provisions of the Interim Final Rule that would make accessing the preventive services benefits of Section 2713 disproportionately burdensome for people with mental health and/or substance use disorders

NAMI would urge reconsideration of provisions of the proposed regulations that would be particularly burdensome for people with mental illness to access preventive services. Specifically, we ask that the Departments to:

- Reconsider the provision allowing cost-sharing to be imposed if a preventive service is billed separately from the office visit. The logical and convenient setting for many of the covered preventive services is during primary care office visits, however the regulations allow 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 illness 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 unlikely to seek them out on their own.

- Require plans to allow out-of-network providers to conduct preventive health screens if no in-network provider is reasonably available, without cost-sharing. The limited number of providers available to screen for substance use disorders and mental illness is a serious concern, and the regulations should 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. This is especially important in rural areas.

- Require plans to disclose the medical management criteria they use for preventive services to enrollees in advance of them accessing preventive care services. The regulations allow plan issuers to use "reasonable medical management techniques" to determine coverage limitations if a recommendation or guideline for a recommended preventive service does not specify the frequency, method, treatment or setting for the provision of that service. Given that there is no federal definition of "reasonable medical management," plans should be required to disclose the medical management criteria they are using to plan participants in advance so participants will know whether the cost-sharing requirements of the service will actually be waived.

4. Provide additional guidance with respect to frequency of recommended screenings

Where the guidelines are silent as to frequency, the interim rules allow health plans to set limits based on "reasonable medical management techniques" - a term that is not defined in the regulation. NAMI is concerned with leaving the definition of this phrase to health plans to exercise such discretion. NAMI therefore joins CCD in recommending:

- Definition: The regulations should clearly define "reasonable medical management techniques."
- Source of evidence: plans should use and publicly identify a credible reference/source in making such determinations; (such as but not limited to the Milliman Care Guidelines: www.careguidelines.com)

- Recourse: Enrollees must be provided the right to appeal these determinations – both to their health plans and to the appropriate oversight agency to and ensure adequate enforcement.

5. Address the needs of high risk populations, including individuals living with serious mental illnesses and/or other 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 individuals 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.

6. Clarify the status of 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 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 "The USPSTF recommends against the service."

The USPSTF is expected to present recommendations on falls prevention and other activities in the near future. NAMI joins CCD in recommending that the final regulations clearly state a timeline for requiring health plans to incorporate recommended services as they are identified by the USPSTF.

7. Require notice to plan 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.

8. Promote 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

NAMI appreciates the opportunity to give comments on the rules related to coverage of preventive services under the ACA. Thank you for your careful consideration on the recommendations intended to improve protections for children and adults living with mental illness and their families.

Sincerely,

Andrew Sperling
Director of Legislative Advocacy