September 17, 2010

Office of Consumer Information and Insurance Oversight
Department of Health and Human Services
Attention: OCIIO-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: CCD 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:

The co-chairs of the Consortium for Citizens with Disabilities (CCD) Health Taskforce appreciate 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. CCD 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 living. In addition, an increased emphasis on prevention changes the focus of health care from exclusively treating conditions that have developed into medical problems to promoting healthy living that will reduce health care costs over the long term and improve quality of life.

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

CCD is a coalition of approximately 100 national disability organizations working together to advocate for national public policy that ensures the self determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. Since 1973, the CCD has advocated on behalf of people of all ages with physical and mental disabilities and their families. CCD has worked to achieve federal legislation and regulations that assure that the 54 million children and adults with disabilities are fully integrated into the mainstream of society.

"Prevention" from a Disability Perspective

People with disabilities and chronic conditions clearly benefit from the types of prevention services covered by the Interim Final Rules, as do all Americans. But there is another aspect to prevention that is particularly relevant to people with disabilities: prevention of *secondary disabilities*. The Centers for Disease Control and Prevention (CDC) defines a secondary condition as *"any condition to which a person is more susceptible by virtue of having a primary disabling condition."* (Simeonsson and McDevitt, 1999.) "Secondary condition" is a term accepted in the field of disability and public health around 1990 and is an expansion of the medical/rehabilitation term, *co-morbidity.* Children and adults with disabilities can experience secondary conditions any time during their lifespan.

If the overall 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 to encompass improvement and/or maintenance of function and prevention of *secondary disabilities* is critical. For instance, as important as routine cancer screenings are to the general population, periodic assessments of wheelchair seating for people with long term mobility device users are just as critical to this subpopulation. Without the proper seating system, a long term wheelchair user can easily develop decubitus ulcers and other skin breakdowns that are difficult and expensive to treat, and compromise healthy and independent living.

Beyond periodic tests or assessments that prevent disease and disorders, *the concept of prevention should be recognized throughout the health system.* For instance, benefit packages should cover the provision of rehabilitation therapies and orthotic devices that help maintain range of motion and prevent muscle atrophy and contractures in order to prevent further deterioration of function as a person with a disability ages, or his or her disability progresses. This is a critical concept that we hope the national focus on prevention and wellness translates into real improvements in healthcare coverage policies that fully meet the needs of people with disabilities and chronic conditions.

Definition and Scope of Preventive Services

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) 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 CCD 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 that will be covered with no cost sharing 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 functional status and quality of life component to preventive services that will allow individuals with and without disabilities and chronic conditions to access services that will help maintain independent, productive, healthy lives.

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. CCD is concerned with leaving the definition of this phrase to health plans to exercise such discretion. CCD recommends:

- Definition: The regulations should clearly define "reasonable medical management techniques;"
- Source of evidence: Plans should use and publicly identify a credible, independent reference/source in making such determinations;
- Recourse: Enrollees must be provided the right to appeal these determinations – both to the health plans' internal appeals process and an external appeals process as well.

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 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. CCD recommends that the final regulations clearly state a timeline for requiring health plans to incorporate recommended services as they are identified by the USPSTF. The prevention of falls in the aging population is a good example of the types of prevention tests and assessments that would be most useful to the disability population. For instance, assessments of brain function/impairment for those who have already experienced one concussion would be an effective way to identify persons at-risk for more permanent brain injury or what is known as "Second Impact Syndrome." Similarly, periodic seating assessments for wheelchair users with long term mobility impairments could have a major effect in reducing the incidence of skin breakdowns and resulting treatment in this subpopulation.

Value Based Insurance Design (VBID)

According to statutory intent, regulations defining Value Based Insurance Design (VBID) should make it clear that the program must be aimed at improving health outcomes and increasing the quality of care. We are aware of concerns that VBID could mean nothing more than limiting the size of provider networks or reducing reimbursement for providers of preventive services. CCD does not believe that health plans that use "Value Based Insurance Design" to reduce costs by limiting services or access are "value-based programs." Preventive services should be fully available in these plans.

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

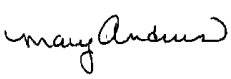
provided regarding preventive services available to high risk populations including individuals with disabilities and chronic conditions. To ensure standardization, HHS and DOL should provide a form for plans to use.

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, including enforcement capability.

Conclusion
CCD believes the interim final rules are a significant step forward for all Americans, including persons with disabilities and chronic conditions. Nonetheless, we believe that the rules could be further strengthened in significant ways that relate much more directly to this subpopulation. If you have any questions, please feel free to contact any of the Health Task Force Co-Chairs listed below. Thank you for your consideration of our comments.

Sincerely:

CCD Health Task Force Co-Chairs:



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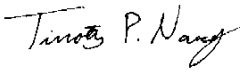

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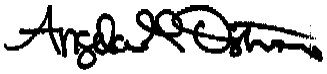

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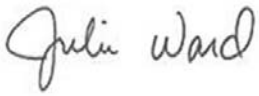

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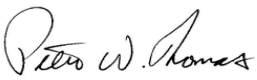

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