THE COUNCIL of INSURANCE AGENTS & BROKERS

February 28, 2011

VIA ELECTRONIC FILING – www.regulations.gov
Office of Consumer Information and Insurance Oversight
United States Department of Health and Human Services
Attn: HHS-OS-2010-002
Room 445-G, Hubert H. Humphrey Building
200 Independence Avenue SW
Washington, DC 20201

Re: Request for Information Regarding Value-Based Insurance Design in Connection With Preventive Care Benefits, File Code HHS-OS-2010-002

Ladies and Gentlemen:

The Council of Insurance Agents & Brokers ("The Council") appreciates this opportunity to respond to the above-referenced request for information concerning value-based insurance design in connection with the provision of preventive care benefits under the Patient Protection and Affordable Care Act ("PPACA").[1] The Council is a trade association representing commercial insurance and employee benefits intermediaries and consultants in the United States. Our members include the nation's leading commercial insurance agencies and brokerage firms, which assist tens of thousands of employer-based health insurance plans of all sizes covering millions of American workers, and which seek to help employers and employees obtain the health coverage they need at a cost they can afford. Through working with employers on a daily basis, our membership has developed a thorough understanding of the group health insurance market, and our members have had a unique opportunity to observe the economic and regulatory challenges group health plans have recently faced. Moreover, as PPACA's historic market reforms are implemented, The Council has proudly served not only as a resource to members helping to promote employer compliance, but as a messenger actively communicating to the implementing agencies our members' findings about what employers are struggling with as part of their compliance obligations.

One important aspect of our members' work involves advising health plans on ways to improve quality, reduce costs, and improve the health status of employees. More specifically, our members help employers design and implement group health plans. Use of value-based insurance design is an important part of this process, and will become more so as PPACA's implementation places increasing emphasis on improvements in plan quality and efficiency. We accordingly commend the Departments for recognizing the important role that value-based insurance design can play in promoting the appropriate use of preventive services, and urge the Departments to establish value-based insurance guidelines that allow for ample flexibility and innovation in the use of value-based insurance design.

[1] Request for Information Regarding Value-Based Insurance Design in Connection With Preventive Care Benefits, 75 Fed. Reg. 81544 (Dec. 28, 2010) ("Request for Information").

Background

Section 2713 of the Public Health Service Act ("PHSA"), as added by PPACA, requires non-grandfathered group health plans and health insurance coverage to provide certain preventive care services without imposing cost-sharing requirements. Congress included in Section 2713(c) specific authorization for implementing agencies to establish guidelines allowing plans to use value-based insurance design.

As the Departments explain, value-based insurance design includes "the provision of information and incentives for consumers that promote access to and use of higher value providers, treatments, and services," and can play an "important role" in "promoting the use of appropriate preventive services."[2] Among the earliest and most common examples of value-based insurance design are plans providing certain prescription medications for specific chronic conditions for free or at a more favorable level of cost-sharing, to encourage participants to adhere to their drug regimens. By establishing an inverse relationship between a participants' out-of-pocket costs and the clinical value of the treatment or service, the hope is that participants are healthier because they actually take the drugs and obtain the treatments and services that will help them, and costs are more manageable because these participants are better able to avoid more expensive interventions such as hospitalization. Ultimately, the goal, as explained by experts on value based insurance design, is to "maximize health outcomes using available health care dollars."[3]

The Importance of Allowing for Flexibility and Innovation in Value-Based Insurance Design

One of the most critical aspects of our members' work is assisting employers with the design of health plans that provide the care employees need and want, while operating at a level of efficiency that promotes the plan's long-term sustainability. Value-based insurance design is an important part of this effort, and can take a number of forms. For example, plans have long imposed different cost-sharing requirements for in-network services versus those obtained by participants out-of-network. Such frameworks naturally carry over into the realm of preventive services as recognized in the Preventive Services IFR, which permits plans to impose cost-sharing, or decline to cover, where preventive services are delivered on an out-of-network basis.[4] Our members report that many sponsors of non-grandfathered plans have incorporated such an element into their plans' preventive service offerings, and view this as key to their ability to promote appropriate and efficient use of preventive services.

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[2] Interim Final Rule for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 41726, 41729 (July 19, 2010) ("Preventive Services IFR").

[3] *See, e.g.*, A. Mark Fendrick, M.D., "Value-Based Insurance Design Landscape Digest," University of Michigan Center for Value-Based Insurance Design (July 2009), at 4.

[4] *See* Preventive Services IFR, 75 Fed. Reg. at 41728-29. The IFR also permits plans to use "reasonable medical management techniques" to determine the frequency, method, treatment or setting for preventive services where such matters are not addressed in the recommendations of the United States Preventive Services Task Force and other guidelines that outline the preventive services that must be offered first-dollar coverage. *See id.*

Along with this approach, the Departments have also explicitly acknowledged that plans may impose cost-sharing structures that steer participants to particular high-value settings for preventive services even within a network, if there is a "safety valve" to accommodate participants for whom that particular setting is less appropriate.[5] We believe that this too is a design option that plans have and will continue to incorporate. Indeed, some observers in the industry have expressed concerns that offering preventive services at no cost disengages the participant from understanding the true cost of healthcare, which could lead to a continued upward spiral of healthcare costs. This concern is analogous to ones that have been debated regarding health care in general, and have helped fuel the increasing popularity of "consumer-driven" healthcare initiatives. As agents and brokers assisting employer-clients, our members have recognized a desire among employees to be more of a "consumer" when it comes to healthcare. We believe that the more access employees have to information that allows them to compare clinical outcomes and service fees in conjunction with promoting access to treatment and services, the better the results for health care quality and cost management.

Significantly, there are studies supporting the conclusion that particular value-based insurance designs have yielded positive results.[6] It is important to keep in mind, however, that the question of whether a particular approach will promote better health outcomes and cost efficiency also depends on the characteristics and location of the population involved, and designs often need to be modified and tweaked to better tailor them to the workforce in question.[7] Moreover, value-based insurance design is an evolving process. Some employers are testing newer design models, such as ones that employ financial disincentives for use of low-value services in addition to financial incentives for high-value services, to determine whether the combination will more reliably reduce costs.[8] Some experts have also observed that value-based insurance design will have more of an impact on efficiency when it is applied more widely to surgical procedures, imaging, medical devices, and other major drivers of health care costs.[9]

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[5] *See* U.S. Departments of Health and Human Services, Labor, and Treasury, FAQs About the Affordable Care Act Implementation Part V and Mental Health Parity Implementation (posted Dec. 23, 2010), *available at* www.dol.gov/ebsa/faqs/faq-aca5.html.

[6] *E.g.*, Chris Fleming, Health Affairs Blog (Nov. 2, 2010) (discussing university studies which concluded that reduced cost-sharing had favorable impact on patient adherence to medications), *available at* http://healthaffairs.org/blog/2010/11/02/new-health-affairs-issue-value-based-insurance-design/.

[7] The need for adequate flexibility is highlighted by the fact that even differences in employee location can dictate value-based insurance design elements. For example, variances in in-network and out-of-network costs can only succeed in managing expenses if participants have adequate access to in-network providers. Yet there are rural areas and less densely populated states where access to in-network providers is an issue, and plan requirements and state mandates may preclude arrangements where there is a disincentive for utilizing out-of-network providers. In such cases, plans will need the flexibility to employ other types of value-based insurance designs suited to their workforce.

[8] *See, e.g.*, Michelle Andrews, "In New Insurance Model, Costs Are Based On Value Of The Treatment," Kaiser Health News (Nov. 29, 2010) (describing Oregon public employee benefits design that includes higher cost sharing for services that are "overused" or patient "preference sensitive"), *available at* http://www.kaiserhealthnews.org/Features/Insuring-Your-Health/pegging-price-to-value.aspx.

[9] Chris Fleming, Health Affairs Blog (Nov. 2, 2010) (discussing views of University of California at Berkeley health economics Professor James Robinson), *available at* http://healthaffairs.org/blog/2010/11/02/new-health-affairs-issue-value-based-insurance-design/.

All of this highlights the importance of flexibility in implementing value-based insurance designs, because what works for one group of employees will not necessarily generate a positive outcome for a different group. For this reason, we urge the Department to establish guidelines for value-based insurance design that are flexible in nature, rather than rigid or prescriptive, to facilitate employers' process of determining which plan designs will be most effective in helping them and their employees attain their goals.

It is also important to recognize the link between value-based insurance design initiatives on the one hand, and patient education, disease management, and other components of a well-designed wellness program. The two go hand-in-hand, and studies are showing that the success of value-based insurance design initiatives is enhanced when appropriately paired with wellness program elements.[10] This is echoed in what our members report regarding the real-world success of wellness programs: engaging employees through education, coaching, and incentive-based plan design does lead to behavior change and ultimately, reduction in healthcare costs. Moreover, employers also benefit from reduced absenteeism and increased productivity.

The Council accordingly urges HHS to expeditiously propose regulations to establish the wellness grant program for small businesses under PPACA Section 10408.[11] Our members report that small businesses are particularly in need of assistance in the area of alternatives for healthcare cost management. Yet, small businesses typically lack the resources to establish wellness programs, which can be an administrative burden and added expense especially for companies with fewer than 100 employees. Employers are clamoring for help in establishing wellness programs now. Expeditious access to grant funds will allow small employers to obtain specialized wellness services, which will promote the type of near-term impact on lifestyle changes and health care costs that was contemplated in PPACA. In sum, the employees of small businesses, and small businesses themselves, can benefit tremendously from gaining access to the types of wellness initiatives that are becoming commonplace in the large group setting.

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[10] *E.g.*, Teresa B. Gibson, et al., "Value-Based Insurance Plus Disease Management Increased Medication Use and Produced Savings," *Health Affairs* (January 2011).

[11] The Departments have advised that they do intend to propose regulations to implement the increased maximum reward amount that can be provided under health-contingent wellness programs, at some point before 2014. In that proposal, we respectfully urge the Departments to address the lack of clarity that presently exists concerning the harmonization of HIPAA – which establishes guidelines for wellness programs to promote better health by targeting common conditions like hypertension, high cholesterol, and obesity – and the Americans With Disabilities Act ("ADA"), which may deem these same conditions to be protected disabilities. Employers seek to design wellness programs that encourage employees to embrace healthy lifestyles. The incentive to do so may be adversely affected if there is too much concern that these same programs create increased risk of ADA violations. The development of a safe harbor, perhaps in coordination or consultation with regulators charged with ADA enforcement, would help to address some employer concerns in this area.

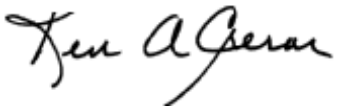
Further, the Departments have acknowledged that some elements of wellness programs, such as cost-sharing surcharges, could "implicate" the limits imposed by the grandfather rules on cost-sharing changes. *See* FAQs About the Affordable Care Act Implementation Part II (Question 5), available at http://www.dol.gov/ebsa/faqs/faq-aca2.html. Where there is the possibility that wellness program elements could impact grandfathered status, we urge that the Departments establish clear, detailed guidelines to enable grandfathered plans to meaningfully weigh the value of maintaining that status against the potential advantages of a particular wellness program design.

Conclusion

The Council appreciates this opportunity to provide information on value-based insurance design in connection with preventive care. Employers are increasingly utilizing value-based insurance design as a means of promoting better health outcomes and cost efficiency, and The Council's members work closely with employers to design and implement these health plans. Value-based insurance design is evolving, and is not a one-size-fits-all proposition. It is important, therefore, for employers to have the ability to tailor value-based insurance designs to their workforce. For this reason, The Council recommends that the Departments adopt value-based insurance design guidelines that allow ample flexibility and innovation.

We stand ready to provide you with any additional information or assistance that may be helpful.

Sincerely,



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