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“Recommended” Preventive Care

On July 19, 2010, the Departments of Treasury, Labor, and Health and Human Services jointly issued Interim Final Rules (IFRs) relating to the coverage of preventive care services under the Affordable Care Act (ACA).

For plan or policy years beginning on or after September 23, 2010 (*i.e.*, January 1, 2011 for calendar year plans and policies), non-grandfathered group health plans (GHPs) and health insurers will not be able to impose cost sharing requirements on certain preventive care services. Grandfathered plans will be able to avoid this requirement, and can continue to impose cost sharing for preventive services so long as grandfathered status is maintained.

Rules for “Recommended Preventive Care Services”

Importantly, this limitation on cost sharing does not apply to all preventive care services, but only to those specifically designated in the IFRs as “recommended preventive care services.” The recommended preventive care services are:

- Preventive care services that have been graded A or B by the United States Preventive Services Task Force (Task Force);
- Preventive care services that appear in four immunization schedules (one for children 0-6; one for children 7-18; a catch-up schedule for children; and one for adults) issued by the Advisory Committee on Immunization Practices that have been Adopted by the Director of the Centers for Disease Control and Prevention; and
- Preventive care services that appear in comprehensive guidelines supported by the Health Resources and Services Administration for Infants, Children and Adolescents (HRSA).

These service lists, charts and guidelines are reproduced in the IFRs, but they will be continually updated. Therefore, the most efficient way to learn which preventive care services are covered by the ACA’s cost sharing prohibition is to go to:

<http://www.healthcare.gov/center/regulations/prevention.html>

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In addition, by August 1, 2011, a list of evidence-informed preventive care and screening procedures for women will also be posted. These will also be subject to the ACA's cost sharing prohibition.

The IFRs also clarify that preventive services not defined as "recommended" can be offered as covered benefits without being subject to the prohibition on cost sharing. Moreover, cost sharing requirements can be imposed on treatments that are not recommended preventive services, but which result from a recommended preventive service.

Where recommended preventive care services are provided during a physician's office visit, (a) if the recommended preventive care services are billed separately, cost sharing can be imposed on the office visit itself, and (b) if they are not billed separately, and (i) the primary purpose of the office visit was to receive the preventive care, then no cost sharing can be imposed, but (ii) if the primary purpose of the office visit was not to receive preventive care, then cost sharing can be required for the office visit.

PPO or network plans are not required to provide coverage for recommended preventive care by out-of-network providers. Thus, cost sharing can be imposed on these services when provided out-of-network.

Finally, if nothing in the guidelines or recommendations noted above specify the frequency, method, treatment or setting of the service, the GHP or insurer can use reasonable medical management techniques to determine any coverage limitations. These techniques are not set forth in the IFRs, which seems to allow some leeway for GHPs and insurers to impose limitations on the number of office visits, scope of services, location of treatment, *etc.*, so long as no cost sharing is involved.

Action Steps

Employers who sponsor non-grandfathered plans must ascertain what "recommended preventive care services" their plans currently provide, and what cost sharing requirements are imposed on participants for those services. Depending on the current plan design, it may be necessary to re-structure the preventive care services that are offered as covered benefits, revise or eliminate the current cost sharing requirements, or some combination of both.

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Employers sponsoring insured plans should check with their insurance carriers to ascertain how they will be changing their policies to meet these new requirements.

Employers who self-fund, but sign on to a pre-packaged benefit design from their third-party administrator, should make the same kinds of inquiries of their TPA. Self-funding employers who design their own benefit programs will need to visit the website <http://www.healthcare.gov/center/regulations/prevention.html>, learn about the universe of recommended preventive services, compare that to their current benefit design, and make whatever changes are most beneficial with respect to preventive care coverage and cost sharing requirements.

If you have any questions about these cost sharing prohibitions on recommended preventive care services, or any other changes imposed by the ACA, please contact any of the Honigman attorneys listed on this Alert.

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