

WELLNESS AND PREVENTION PROVISIONS IN THE PATIENT PROTECTION AND AFFORDABLE CARE ACT

Among the few areas of bipartisan agreement in the new Patient Protection and Affordable Care Act (PPACA; P.L. 111-148) are measures aimed at constraining the growth trend in medical treatment spending and costs through health and wellness promotion and prevention initiatives.

Health experts agree that one of the most challenging trends in the American health care system is the growth of health conditions that require more expensive modes of treatment and that could otherwise have been prevented or better managed at the outset. According to the Centers for Disease Control and Prevention, chronic diseases such as asthma, cancer, diabetes and heart disease account for more than 75 cents of every dollar we spend on health care in this country.¹

Just as illuminating, a 2008 Pricewaterhouse Coopers' Health Research Institute survey disclosed that approximately \$303 billion to \$493 billion annually is spent on treating preventable illnesses, such as those due to obesity, smoking, failure to follow medical directives, and alcohol abuse. (The survey further notes that the costs to the economy as a whole in terms of lost productivity, absenteeism or presenteeism – i.e., sick employees who come to work – can be three to four times higher.)²

For a number of years now, employers have been investing in health promotion, wellness and chronic disease prevention which has yielded considerable dividends in reduced health care costs. A February, 2008 study published in the *Journal of Occupational and Environmental Medicine (JOEM)* showed that employers can save \$1.65 in health care expenses for every dollar spent on a comprehensive employee wellness program. Pittsburgh-based health insurer Highmark, Inc. conducted a study of its own corporate wellness program, which saved \$1.3 million during a four-year period. And last year the CEO of supermarket chain Safeway reported that its wellness discount program had kept the company's per-capita health care costs flat during a four-year period, while most American companies' costs increased 38% during the same time frame.³ Additionally, studies have shown that companies that invest in efficient comprehensive wellness programs also benefit from reduced workers' compensation claims and increased productivity.⁴

With the goal of helping to “bend the cost curve” in health care spending, Congress put in place in the PPACA certain mandates and incentives to help promote wellness and healthier lifestyles. Below is an overview of the major wellness and prevention initiatives in PPACA.

Essential Benefits, Elimination of Co-Payments for Screenings and Preventative Care

Starting in September of 2010, employer-sponsored (and other) group health plans and health insurance issuers are prohibited from requiring co-pays for all preventative services recommended by an

¹ Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion. Chronic Disease Overview page: <http://www.cdc.gov/nccdphp/overview.htm#2>

² PricewaterhouseCoopers' Health Research Institute, *Identifying Waste In Healthcare Spending* (2008). Available online at <http://www.pwc.com/us/en/healthcare/publications/the-price-of-excess.jhtml>

³ Steven A. Burd op-ed in *The Wall Street Journal*, “How Safeway is cutting Health Care Costs,” June 12, 2009

⁴ Roni Caryn Rabin, “Could Health Overhaul Incentives Hurt Some?,” *The New York Times*, April 12, 2010

independent expert panel, the United States Preventative Services Task Force.⁵ Co-pays are also eliminated for certain recommended immunizations, breast cancer screenings, and other preventative care/screenings for women and children. However, this requirement does not apply to “grandfathered” health plans, which are defined in PPACA as any plan in which at least one individual was enrolled in as March 23, 2010.⁶

Starting in March of 2011, co-pays are also eliminated for certain preventative services provided to Medicare and Medicaid recipients.⁷ All Medicare beneficiaries are also entitled to receive annual wellness visits, where a physician will review a patient’s condition and design a “personalized prevention plan” by creating a custom-tailored screening schedule for subsequent years.

Additionally, Congress put in place beginning in 2014 “essential health benefits requirements” that most individual, employer and health insurance Exchange plans must cover. The Secretary of Health and Human Services (HHS) is tasked with defining the essential health benefits, however such benefits are required to include certain general categories, including: emergency services, hospitalization, maternity and newborn care, prescription drugs, laboratory services, mental health services, preventive and wellness services and chronic disease management.⁸

Employee Wellness Discounts

Previously, a provision in the 1996 Health Insurance Portability and Accountability Act (“HIPAA”) permitted employers to reduce the cost of health insurance premiums for employees practicing healthy behaviors. The provision, which provided for a reduction of up to 20% of the employees’ regular premium cost, allowed employers to reward workers who met certain criteria “reasonably designed to promote health and prevent disease”.⁹ This typically includes employees who refrain from smoking, maintain a healthy weight, and keep blood pressure and cholesterol levels low.

Starting January 1, 2014, the PPACA enhances such wellness discounts by permitting group health plans to give reductions of up to 30% of the cost of premiums to employees who participate in such wellness programs. This may be expanded to 50% subject to the discretion of the Secretary of HHS.¹⁰

Employers offering wellness discounts must ensure that such programs are voluntary, are not employed in a discriminatory manner—i.e., the program cannot be “a subterfuge for discriminating based on a health status factor,” and give eligible individuals the opportunity to qualify for the discount at least once a year. Additionally, there must be reasonable alternative standards for obtaining the reward (i.e., so that an employee who suffers from obesity due to a non-treatable thyroid condition can still meet other wellness benchmarks to qualify.) Certain small employers will be eligible for federal grant monies to help launch such wellness programs starting in 2011.¹¹

⁵ PPACA, Sec. 2713

⁶ PPACA, Sec. 1251

⁷ PPACA, Sec. 4104-4108

⁸ PPACA, Sec. 1302

⁹ See 29 CFR §2590.702(f)

¹⁰ PPACA, Sec. 2705

¹¹ PPACA, Sec. 10408. The law establishes \$200 million in wellness grant funding to be distributed to eligible small employers for fiscal years 2011 to 2015. Eligible employers are defined as those who employ less than 100 employees which work 25 hours or more per week, and also who do not have a wellness program in place as of March 23, 2010 (the date of enactment).

The PPACA also authorizes a 2014 pilot program testing wellness discounts in ten states' individual insurance markets.¹²

Break Time for Nursing Mothers

Effective immediately, the new health care law provides that employers covered by the Fair Labor Standards Act must provide reasonable break time and a private space—other than a restroom—for a nursing mother to express breast milk for up to one year after the birth of a child. Employers are not required to compensate employees during such break times. Additionally, employers with less than 50 employees may qualify for exceptions if it can be proven that the requirement would impose an undue hardship on the employer.¹³

Posting of Nutritional Requirements

By March of 2011, the Secretary of HHS must publish regulations requiring all chain restaurants (defined as any establishment that has 20 or more locations operating under the same name) to disclose the nutritional content of all menu items. Specifically, the number of calories for each item must be disclosed on menus, menu boards, and drive through menu boards, and such menus must also feature “a succinct statement concerning suggested daily caloric intake.” This requirement also extends to buffet items, and vending machines maintained by companies that operate 20 or more machines.¹⁴

Government Funding for Wellness Programs

In addition to the specific provisions outlined above, the PPACA also creates a “Prevention and Public Health Fund” which will be administered through HHS and will support prevention and public health programs. Beginning with the fiscal year 2010, \$500 million will be appropriated to various programs within HHS, with the amount of appropriations increasing each year to \$2 billion in the fiscal year 2015 and each year thereafter. Under PPACA, the funds are to be used for activities such as prevention research and health screenings, the Community Transformation grant program (designed to fund state and municipal wellness programs by creating walking paths, nutrition awareness programs, etc.), Education and Outreach Campaign for Preventative Benefits (a planned public-private partnership to raise awareness on preventative care), and immunization programs.¹⁵

Additionally, school-based health centers (facilities that provide primary health care to students on school campuses) will receive \$50 million per year in grant funding through 2013. These grants monies are to be used only for expenditures on facilities and equipment, not for hiring personnel.¹⁶

Effective immediately, PPACA also established the National Prevention, Health Promotion and Public Health Council (“Council”) which will be composed of the Secretaries and Chairs from the executive departments and chaired by the Surgeon General. The Council will be charged with coordinating prevention, wellness and health promotion practices at the federal level and among all federal departments and agencies. The Council will also be required to issue recommendations to the President and Congress with respect to what they consider the most pressing obstacles to reducing smoking, sedentary lifestyles and poor nutrition.¹⁷

¹² PPACA, Sec. 2703

¹³ PPACA, Sec. 4207

¹⁴ PPACA, Sec. 4205

¹⁵ PPACA, Sec. 4002

¹⁶ PPACA, Sec. 4101

¹⁷ PPACA, Sec. 4001

While significant work and details remain in implementing regulations of the PPACA's wellness initiatives, the new law embodies a heightened emphasis on personal accountability for health and wellness. And though the expansion of health care screenings, vaccinations and preventative care may initially result in an increase in health care costs, policymakers, health experts and other stakeholders believe that preventing illnesses and diseases—before they become more difficult and costly to treat—will ultimately reduce spending and help promote a healthier population.