



September 28, 2010

Jay Angoff, Director
Office of Consumer Information and Insurance Oversight
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W. Room 445-G
Washington, DC 20201

RE: Pre-Existing Condition Insurance Plan Program (File Code: OCIO-9995-IFC)

Dear Director Angoff:

Thank you for the opportunity to provide comments on the interim final rule that implements requirements in section 1101 of the Patient Protection and Affordable Care Act (ACA), which would address key issues such as the administration of the Pre-Existing Condition Insurance Plan (PCIP) program, eligibility and enrollment, benefits, premiums, funding, and appeals and oversight rules. As the nation's oldest and largest advocacy organization concerned with all aspects of mental health, Mental Health America (MHA) appreciates the opportunity to comment on complex issues regarding development and administration of the PCIP program. MHA strongly supports the goals of health care reform to ensure that all Americans have access to high quality, affordable health care, including mental health and addiction care.

We are writing to express our concerns over the Office of Consumer Information and Insurance Oversight's (OCIO) recently issued Interim Final Rule regarding the PCIP program, as mandated by section 1101 of the Affordable Care Act. We are particularly concerned that the Interim Final Rule (1) fails to specifically address rehabilitation and habilitation services and devices, (2) fails to describe preventive care requirements, (3) does not guarantee parity between mental health and substance use disorder benefits and medical and surgical benefits, (4) does not outline a strategy for gaining enrollment in the plan, and (5) does not outline a strategy for consumers to transfer from the high-risk pool to the health insurance exchanges without experiencing a lapse in coverage as required by January 2014. As explained in detail below, these omissions are contrary to plain language of the Affordable Care Act and congressional intent.

Rehabilitative and Habilitative Services and Devices

Under the Interim Final Rule, a PCIP must cover items and services in fourteen categories. The Rule's preamble explains, "The required benefit list in § 152.19(a) builds off the essential health benefits under the new section 2707 of the Public Health Service Act, as enacted in the Affordable Care Act, for which guidance has yet to be issued."¹ However, the PCIP benefits list does not include all of the ten categories of essential health benefits. We are particularly concerned that "rehabilitative and habilitative services and devices" are omitted from the PCIP

¹ Pre-Existing Condition Insurance Plan Program, 75 Fed. Reg. 45014, 45017-18 (July 30, 2010).

benefits list. This category of benefits has profound implications for the ability of individuals with disabilities and chronic conditions. Therefore, appropriate regulatory provisions that address the scope of benefits under this provision are critically important to the populations we represent – a population that could include, at one point in their lives, one of every two Americans.

Currently, the PCIP benefits list merely includes “durable medical equipment and services” and “physical therapy services (occupational therapy, physical therapy, speech therapy).” We believe these items and services comprise only a small portion of the universe of rehabilitative and habilitative services and devices. Accordingly, we strongly recommend that the PCIP benefits list specifically list “rehabilitative and habilitative services and devices” as a benefit.

Preventive Services

Mental Health America is pleased that the required list of benefits in §152.19(a) includes preventive services as an essential benefit in the PCIP program. The majority of individuals who develop a mental health condition during their lifetime will meet diagnostic criteria by age 14. However, they will not receive any treatment until age 24. Academic, social and occupational disability therefore develops as does the chronicity of their mental health condition. Preventive services, such as those recommended by the United States Preventive Services Task Force (Task Force), could help to close this treatment gap and ultimately reduce the disability and chronicity of these illnesses. The interim final rule does not address what types of preventive services will be required, but MHA recommends those outlined in the interim final rules for group health plans and health insurance issuers relating to coverage of preventive services under the ACA².

MHA recommends OCIIO to specify that preventive services that have received an ‘A’ or ‘B’ rating in the current recommendations of the Task Force be automatically covered services offered by a PCIP. These include alcohol misuse screening and counseling for adults, depression screening for adolescents and adults, and tobacco use counseling for adults and interventions for pregnant women.

Additionally, MHA recommends the PCIP essential benefit package include the Health Resource Services Administration’s (HRSA) endorsed services listed in the interim final rule for group health plans and health insurance issuers relating to coverage of preventive services. 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

MHA recommends OCIIO include in the final rule a list of essential preventive services that include prevention of mental health and substance use conditions, and subscribe to the preventive benefits that are already required with no cost sharing by group health plans and health insurance issuers.

² Requirement for Group Health Plans and Health Insurance Issuers to Provide Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 41787-88 (July 19, 2010)

Mental Health Parity

Mental Health America is pleased that Section 152.19 (Covered benefits) includes a requirement for coverage of mental health and substance abuse services. Unfortunately, the Interim Final Rule does not require coverage offered through a PCIP to adhere to the standards in the Paul Wellstone-Pete Domenici Mental Health Parity and Addiction Equity Act (Wellstone-Domenici) while the Insurance Exchanges to which individuals in the PCIP program will transition in 2014 require a parity benefit. Section 1311 of the ACA includes as part of the non-discrimination standards for plans offered through the Health Insurance Exchanges a requirement for the plans to meet the standards in Wellstone-Domenici with respect to mental health and substance abuse benefits. MHA would urge OCIIO to anticipate this transition in 2014 in the design of covered benefits offered through the PCIP program.

MHA supports the PCIP program recognizing the need for a broad scope of medically appropriate, evidence based interventions in the continuum of behavioral health services and supports. Coverage should include prevention, early intervention, treatment, and rehabilitation services, and offer a full range of services to address the continuum of behavioral health needs for consumers experiencing mild to severe illnesses. Just as orthotic and prosthetic care is required for individuals with motor or skeletal disabilities, a range of psychosocial recovery and rehabilitative services are required for individuals with mental health and addictive disorders to live productive lives in the community.

MHA strongly urges the OCIIO to collaborate with the Substance Abuse and Mental Health Services Administration to assist in developing a benefit standard. The intent of Congress was for behavioral health services to be seamlessly integrated with primary care, with the focus on the consumer as the center of the health care system. A wide range of services should be available for people based on a range of acuity, disability, and engagement levels. The degree of disability and the need for long-term vs. acute care services, as well as the consumer's goals, should dictate the services rendered. While the needs and goals of many individuals with behavioral health needs can be addressed by basic services, individuals with enduring disabilities or behavioral health conditions that do not respond to primary care services should have available more intensive services.

The interim final rule implementing Wellstone-Domenici³ addresses the need for non-quantitative treatment limitations for mental health and substance disorder services to be at parity with non-quantitative treatment limits for medical/surgical services. To this end, issues such as medical necessity criteria, coverage determination processes, and the number and accessibility of providers in the network should be addressed in this interim final rule. Consumers in need of mental health and addiction services enrolled in a PCIP should not have any more stringent standards for accessing a full range of appropriate treatment options than those seeking medical/surgical services. Referencing the standards outlined in the Wellstone-Domenici interim final rule will help to insure appropriate access.

³ Interim Final Rules Under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008. 75 Fed. Reg. 5410-51. (February 2, 2010).

Enrollment

Mental Health America urges OCIIO to address the role of the PCIP program and the states in enrollment of consumers to the plans. Without specific guidance regarding the methods and resources used to identify uninsured consumers with pre-existing chronic conditions, the objective of the PCIP program to provide insurance coverage to individuals who would otherwise be forced to be uninsured until the exchanges are established in January 2014, will not be realized. Understanding that there is a cap on enrollment to the PCIP program, MHA urges OCIIO to identify methods for engagement in the plan, keeping in mind that individuals managing chronic conditions, especially those with behavioral health conditions, may need additional outreach and assistance in navigating the system.

Transition to Exchanges

Mental Health America is concerned that without proper guidance, the transition of individuals from the PCIP program to the health insurance exchanges may leave some individuals without coverage. The interim final rule states that “the PCIP program will end effective January 1, 2014” and that “coverage of claims under the PCIP program will extend only to the costs of covered services provided up through December 31, 2013.” The interim final rule states that specifying transition procedures is premature given that the exchanges are still being developed, however MHA urges OCIIO to consider some flexibility in termination dates and forethought regarding the transition of individuals with chronic conditions, especially those with behavioral health conditions, to the exchanges. It would be detrimental to continuity of care to have a gap in coverage or a transition procedure that does not account for the special needs of this population.

Mental Health America believes the interim final rules are a significant step forward for persons with behavioral health conditions. Nonetheless, we believe that the rules could be further strengthened in significant ways. If you have any questions, please contact us. Thank you for your consideration of our comments.

Sincerely,



David L. Shern, Ph.D.
President & CEO
Mental Health America