Sibson Consulting

update

Compliance News for Plan Sponsors

November 3, 2015

Departments Release New Guidance on Required Preventive Services Under the Affordable Care Act

The Affordable Care Act[1] requires non-grandfathered health plans to provide certain preventive services in network without charge to the participant or beneficiary.[2] On October 23, 2015, the Departments of Labor, Treasury, and Health and Human Services (the "Departments"), which are responsible for implementing group health plan standards under the Affordable Care Act, published a series of answers to Frequently Asked Questions (FAQs) clarifying certain issues.[3] This *Update* summarizes these new answers to FAQs.

Background

The preventive services that must be provided without cost sharing fall into four different categories: services with an "A" or "B" recommendation from the U.S. Preventive Services Task Force (USPSTF), vaccines recommended by the Centers for Disease Control and Prevention (CDC), the Bright Futures guidelines developed by the American Academy of Pediatrics with support from the Health Resources and Services Administration (HRSA), and certain women's services listed in HRSA guidelines (supplementing some of the USPSTF recommendations).

Lactation Counseling and Equipment

The HRSA guidelines mentioned above require plans to provide coverage of comprehensive lactation support, counseling and equipment rental. Lactation support generally helps mothers learn how to feed babies and address the medical problems that may arise. The new answers to FAQs clarify several issues relating to these requirements:

- Plans must provide a list of lactation counseling providers who are in the plan's network. If the plan does not include such counselors in its network, the plan must cover this service without cost sharing when provided by out-of-network providers.

Health Compliance News Highlights:

- The latest answers to FAQs provide new guidelines for how non-grandfathered plans pay for preventive services.
- Sponsors of those plans should review both plan documents and plan operations to assure that they are in compliance with the latest guidelines.
- Failure to properly implement a non-grandfathered benefit could lead to tax penalties.

[1] The Affordable Care Act is the shorthand name for the Patient Protection and Affordable Care Act (PPACA), Public Law No. 111-48, as modified by the subsequently enacted Health Care and Education Reconciliation Act (HCERA), Public Law No. 111-152.

[2] For background on the preventive services requirements, see Sibson Consulting's March 12, 2013 *Capital Checkup*, "New Guidelines on Preventive Care Benefits for Non-Grandfathered Plans."

[3] These answers to FAQs are available on the DOL website. For information on previous recent answers to FAQs on required preventive services (addressing some of the same topics), see Sibson's May 28, 2015 *Update*, "Additional Coverage Required for Preventive Services Under the Affordable Care Act."

- Women who live in states that do not license lactation counselors must still be able to receive these services. Subject to reasonable medical-management techniques, lactation counseling must be covered without cost sharing when performed by any provider acting within the scope of his or her license or certification under applicable state laws (*e.g.*, registered nurses).
- Plans cannot limit lactation counseling to inpatient settings.
- Plans cannot require that lactation equipment be obtained within a specific time frame (*e.g.*, within six months of delivery). The requirement to provide these services extends for the duration of breastfeeding.
- All health plan sponsors must provide a Summary of Benefits and Coverage (SBC) that includes an Internet address or other contact information, for obtaining a list of network providers. The Departments remind sponsors of plans subject to the Employee Retirement Income Security Act (ERISA) of the need to provide a Summary Plan Description (SPD) that describes the plan's provider networks and whether services are covered out of network.

Weight Management for Adult Obesity

Non-grandfathered plans are not permitted to have a general exclusion for weight-management services for obese adults that would encompass required preventive services. However, precisely what services plans must offer without cost sharing is not clear. Plans must cover screening for obesity for adults. In addition, the USPSTF recommends intensive, multicomponent behavioral interventions for adults with a body mass index of 30 kg/m^2 or higher.

While plan sponsors are permitted to use reasonable medical-management techniques to determine the frequency, method, treatment or setting for these interventions, the Departments set out this example of an intensive, multicomponent behavioral intervention for weight management:

- Group and individual sessions of high intensity (12 to 26 sessions in a year),
- Behavioral-management activities, such as weight-loss goals,
- Improving diet or nutrition and increasing physical activity,
- Addressing barriers to change,
- Self-monitoring, and
- Strategizing how to maintain lifestyle changes.

Screening Colonoscopy

A screening colonoscopy must be covered without cost sharing. However, certain services are integral to receiving the colonoscopy. Consequently, non-grandfathered plans may not charge cost sharing for the following:

- A required specialist consultation prior to the colonoscopy, if the attending provider determines that the pre-procedure consultation would be medically appropriate for the individual, or
- A pathology exam on a polyp biopsy when provided in connection with a screening colonoscopy.

This guidance is effective for plan years beginning on or after December 22, 2015 (January 1, 2016 for calendar-year plans). Previous guidance had clarified that anesthesia services related to the screening colonoscopy must be covered without cost sharing.[4]

Testing for Breast Cancer Genes

Women found to be at increased risk using a screening tool designed to identify a family history that may be associated with an increased risk of having a potentially harmful gene mutation must receive, without cost sharing, coverage for genetic counseling, and, if indicated, testing for mutations of BRCA genes.[5] This requirement also applies to a woman previously diagnosed with cancer, as long as she is not currently symptomatic or being treated for breast, ovarian, tubal or peritoneal cancer.

Implications for Plan Sponsors

Sponsors of non-grandfathered plans should review both plan documents and plan operations to assure that they are in compliance with the latest answers to FAQs. With respect to weight-management counseling, plan sponsors may want to develop custom programs with discounted provider network services, clear clinical management rules, and protocols and reporting tools to make sure care is appropriate and help manage costs. In addition to implementing the preventive services benefits operationally, it is important to have documentation of the benefit, both so that plan participants can understand their coverage and that the plan sponsor can demonstrate the benefit if audited by the Department of Labor or Centers for Medicare & Medicaid Services. Failure to properly implement a non-grandfathered benefit could lead to excise tax penalties of $100 per day for each affected individual and/or the imposition of a requirement to re-process claims under the correct standards.

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[4] That guidance is summarized in Sibson's May 28, 2015 *Update*, "Additional Coverage Required for Preventive Services Under the Affordable Care Act."

[5] BRCA is an abbreviation derived from the first two letters of the words "breast cancer". The BRCA 1 and BRCA 2 gene mutations are associated with an increased risk of breast and ovarian cancer.

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If you would like additional information about this news, please contact your Sibson consultant or the Sibson office nearest you. Sibson can be retained to work with plan sponsors and their legal counsel on compliance issues.

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