

The Synergistic Effect of PPACA and MHPAEA: Implications for Smoking Cessation Therapies

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The Patient Protection and Affordable Care Act of 2010 (PPACA) and the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) have introduced important new coverage requirements to group health plans. The two pieces of legislation have implications across many disease states and delivery channels. This document considers the impact the legislation has on the coverage of smoking cessation therapies and provides our conclusions.

The PPACA contains provisions that are intended to improve access to preventive health services by providing coverage and removing cost as a barrier for insured members covered by group or individual health insurance coverage. The preventive health benefits provisions are effective for affected plans upon their next annual review. PPACA amends the Public Health Service Act by adding Section 2713, which requires group health plans and health insurance issuers offering group or individual coverage to provide, with no member cost sharing,

“evidence-based items or services that have in effect a rating of ‘A’ or ‘B’ in the current recommendations of the United States Preventive Services Task Force (USPSTF).”¹

An ‘A’ rating means that not only is it a recommended service, but also that there is high certainty of substantial benefit resulting from implementing the recommendation.² The USPSTF currently recommends smoking cessation interventions, including both brief behavioral counseling and pharmacotherapy, to prevent tobacco use in adults and pregnant women. They assign a grade of ‘A’ to their

recommendations and further suggest that “combination therapy with counseling and medications is more effective than either component alone.”²

What is not entirely clear from the legislation is the scope of the coverage requirement; that is, whether either or both interventions – counseling and pharmacotherapy – are now mandated preventive services that must be provided. The uncertainty lies in what is considered a required “intervention.” Would counseling alone suffice to meet the mandate? Would providing only a “quit line” suffice? Would pharmacotherapy need to be covered to meet the mandate? The USPSTF recommendation clearly lists both counseling and pharmacotherapy as recommended interventions and indicates that the combination of counseling and pharmacotherapy leads to the best outcomes. Therefore, the PPACA requirement could be interpreted to mean that a comprehensive set of tobacco cessation interventions is required and offering anything less might be noncompliant.

The recommendations from the USPSTF reference the US Public Health Service and Centers for Disease Control Guidelines, which state that “the combination of counseling and medication...is more effective than either alone.”³ Pharmacotherapy approved by the US Food and Drug Administration and identified as effective for treating dependence in nonpregnant adults includes several forms of prescription and over-the-counter medications.

Although the regulations only recently went into effect, two recent initiatives from within the Federal government suggest that offering both counseling and prescription drugs may be required.

LEADING BY EXAMPLE

In the spring of 2010, two letters issued to carriers who participate in the Federal Employees Health Benefits (FEHB) Program clearly defined expectations regarding smoking cessation benefits and programs. The letters indicated that carriers must offer comprehensive smoking cessation programs without limits (annual or lifetime) and without cost sharing beginning with the 2011 plan year.⁴ They further

1. PPACA & HCERA; Public Laws 111-148&111-152: Consolidated Print.

2. Annals of Internal Medicine, Clinical Guidelines, Counseling and Interventions to Prevent Tobacco Use and Tobacco-Caused Disease in Adults and Pregnant Women: U.S. Preventive Services Task Force Reaffirmation Statement, April 21, 2009, Volume 150, Number 8.

3. Fiore MC, Jaén CR, Baker TB, et al. *Clinical Practice Guideline. Treating Tobacco Use and Dependence: 2008 Update*. U.S. Department of Health and Human Services, Public Health Service, 2008.

4. FEHB Program Carrier Letter No. 2010-06 dated April 7, 2010 and No. 2010-12(a) dated May 17, 2010.

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clarified that both counseling and drugs approved by the FDA are to be included in the programs. Does this requirement provide an example of how PPACA's mandate is to be interpreted?

In addition to the benefit changes made to the FEHB Program, Kathleen Sebelius (Secretary, Department of Health and Human Services) and Howard Koh (Assistant Secretary for Health, Department of Health and Human Services) co-authored a recent article in the *New England Journal of Medicine*, "Promoting Prevention through the Affordable Care Act."⁵ They state, "Since tobacco dependence and obesity represent substantial health threats, the Act addresses these specific challenges in a number of ways. For example, the directives for the new health plans established after September 23, 2010 also include coverage, with no cost sharing, of tobacco-use counseling and evidence-based tobacco cessation interventions...."⁵ This statement appears to affirm that the scope of the PPACA requirements is intended to include both counseling and pharmacotherapy.

THE UNION OF PPACA AND MHPAEA

In addition to PPACA, MHPAEA and the associated Interim Final Rules also became effective this year for most large-group (over 50 employees) health plan renewals on or after July 1, 2010.⁶ The synergy of PPACA and MHPAEA has some interesting implications for plan sponsors and carriers.

As mentioned above, PPACA requires coverage for smoking cessation interventions through preventive benefits at no cost-sharing. Even though the scope of what constitutes an "intervention" is not yet clear, it is very likely that either counseling for smoking cessation or pharmacotherapy will need to be included as covered preventive benefits within affected health plans.

5. *The New England Journal of Medicine*, 10.1056/NEJMp1008560.

6. Interim Final Rules implementing the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act. *Federal Register*. February 2, 2010.

Here is where it gets interesting. The MHPAEA Interim Final Rules define six benefit classifications: in-network inpatient, out-of-network inpatient, in-network outpatient, out-of-network outpatient, emergency care, and prescription drugs. The MHPAEA Interim Final Rules contain a provision that if a health plan provides insured benefits for a mental health or substance use disorder in any of the six classifications of benefits, the health plan must also provide coverage for that disorder in all of the classifications that provide medical/surgical benefits.⁶

Therefore, with PPACA requiring, at a minimum, counseling for tobacco dependence (a service in the outpatient classification[s]), health plans must also provide prescription drug coverage for smoking cessation therapies to comply with MHPAEA. So it seems that despite the uncertainty of what constitutes the scope of an "intervention" as recommended by the USPSTF, when PPACA and MHPAEA are considered together, it is our conclusion that coverage for tobacco dependence must be comprehensive in order to comply with both pieces of legislation.

EXCEPTIONS

The PPACA establishes that grandfathered plans do not have to conform to the preventive benefit requirements.¹ Maintaining this grandfathered status is not easy for employers, and their health insurers must also support such activity. It is expected that most health plans will not pursue or may not be able to maintain this grandfathered status and will need to comply with the PPACA regulations. Also, the MHPAEA does not require coverage for nicotine addiction. However, if covered within the insured benefits, it must be covered in every class.

LAST WORDS

The requirement of PPACA to cover preventive benefits, the reference to the USPSTF recommendations as to what are evidence-based items or services that must be covered, and the clinical guidelines that identify both counseling and prescription drugs as being included as evidence-based treatments all seem to lead to broad new coverage to help Americans quit smoking, and hopefully will lead to improved health for all those affected.

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