

United States Senate

WASHINGTON, DC 20510-6200

March 11, 2024

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Ave, SW
Washington, DC 20201

The Honorable Janet Yellen
Secretary
U.S. Department of Treasury
1500 Pennsylvania Ave, NW
Washington, DC 20220

The Honorable Julie A. Su
Acting Secretary
U.S. Department of Labor
200 Constitution Ave, NW
Washington, DC 20210

Dear Secretary Becerra, Secretary Yellen, and Acting Secretary Su:

The Patient Protection and Affordable Care Act of 2010 (ACA) required that most private individual and group health plans cover certain evidence-based preventive services without cost-sharing.¹ While the law, in our view, is crystal clear, private health insurers and providers continue to charge cost-sharing for services integral to the delivery of preventive services leaving Americans with hundreds of millions in out of pocket costs.² Access to these evidence-based preventive services, such as screenings for HIV infection, colon cancer, immunizations, and annual well-women preventive visits, are essential for the early diagnosis, management, and treatment of disease. It is unacceptable that Americans continue to face cost-sharing for these services. The Departments of Labor, Health and Human Services (HHS), and Treasury (together the Departments) should work together to issue further guidance to insurers to protect Americans from inappropriate cost-sharing and investigate and audit insurers to hold them accountable if they fail to follow the law.

1 42 U.S.C. §300gg-13

2 Hoagland, A. and Shafer, P. (2021). Out-of-pocket costs for preventive care persist almost a decade after the Affordable Care Act. *Preventive Medicine*, 150, 106690.
<https://doi.org/10.1016/j.ypmed.2021.106690>.

Preventive services are key to better health outcomes but are still underutilized. Preventive services can both prevent illness and identify health problems early when clinical interventions are accessible.³ However, the proportion of Americans aged 35 and older receiving all of recommended clinical preventive services has decreased from 8.5% in 2015 to 6.9% in 2018, and an abysmal 5.3% in 2020 during the coronavirus pandemic.⁴ The Commonwealth Fund Health Care Affordability Survey fielded last year found that for adults between 19-64, 29% with employer-sponsored insurance and 37% with individual or marketplace coverage delayed or skipped needed health care for themselves or a family member because they could not afford it.⁵

Cost-sharing is a barrier to care – reducing the use of services, including highly effective services.⁶ To ensure access to evidence-based preventive services, the ACA required non-grandfathered private plans to cover the following in-network preventive services recommended by the United States Preventive Services Task Force with an “A” or “B” rating, without cost-sharing: immunizations recommended for routine use from the Advisory Committee on Immunization Practices, recommendations to improve the health and well-being of infants, children, and adolescents in the Health Resources and Service Administration’s (HRSA’s) Bright Future Projects, and recommended services in the HRSA-supported Women’s Preventive Services Guidelines.⁷

Since passage of the ACA, academic reports and the news media have documented a persistent disregard for the law by insurers.⁸ While guidance and regulations from the Departments have repeatedly addressed this issue, medical billers have new ways to miscode preventive care and insurers continue to pass along costs to patients.⁹ For example, while CMS

3 Office of Disease Prevention and Health Promotion. (2022, August 26). An Ounce of Prevention ... Can Save a Person’s Life. *Health and Well-Being Matter*. <https://health.gov/news/202208/ounce-prevention-can-save-persons-life>

4 Office of Disease Prevention and Health Promotion, Increase the proportion of adults who get recommended evidence-based preventive health care — AHS-08 - Healthy People 2030. <https://health.gov/healthypeople/objectives-and-data/browse-objectives/health-care-access-and-quality/increase-proportion-adults-who-get-recommended-evidence-based-preventive-health-care-ahs-08>

5 Collins S.R., Roy S., and Masitha R. (2023, October 26). Paying for It: How Health Care Costs and Medical Debt Are Making Americans Sicker and Poorer: Findings from the Commonwealth Fund 2023 Health Care Affordability Survey, *The Commonwealth Fund*. <https://www.commonwealthfund.org/publications/surveys/2023/oct/paying-for-it-costs-debt-americans-sicker-poorer-2023-affordability-survey>

6 Brook, R.H., Keeler, E.B., et al. (2006). The Health Insurance Experiment: A Classic RAND Study Speaks to the Current Health Care Reform Debate. *RAND Corporation*. https://www.rand.org/pubs/research_briefs/RB9174.html

7 Public Health Service Act (42 U.S.C. §300gg-13), Employee Retirement Security Act of 1974 (29 U.S.C. § 1185d(a)) and the Internal Revenue Code (26 U.S.c. § 9815)

8 Andrews, M. (2014, January 21). Consumers expecting free “Preventive” care sometimes surprised by charges - KFF Health News. KFF Health News. <https://kffhealthnews.org/news/michelle-andrews-consumers-expecting-free-preventive-care/>

9 FAQs about Affordable Care Act Implementation (Part 51) Q6 (2022, January 10); 85 F.R. 71142, 71174 (Nov. 6, 2020); FAQs about Affordable Care Act Implementation (Part XXIX) and Mental Health Parity Implementation (2015, October 23); FAQs About Affordable Care Act Implementation (Part XII), Q5 (2013, February 20).

has used a medical professional's administering of an immunization and collection of a specimen for a laboratory-performed screening as examples of items and services integral to furnishing recommended preventive services – and thus should be covered without cost-sharing – ¹⁰ a recent paper in *Health Affairs* noted that “immunization administration” was commonly charged for individuals who received a flu vaccine.¹¹

Recent news coverage has revealed dishonest provider billing practices are not being caught by insurers leading to individuals being charged hundreds of dollars in unexpected bills for preventive services that should be covered without cost sharing.^{12,13} The *Washington Post* coverage included clear examples where patients who are receiving covered preventive services are also being billed for additional “equipment fees” such as surgical trays and facility fees and that the patients are told these fees are not covered by the ACA, as well as for services integral to preventive colonoscopy screenings like polyp biopsies. This is unacceptable.

Health plans should be accountable for ensuring that preventive services are covered without cost sharing in accordance with the law. Patients should not have to appeal these charges and be deterred from seeking preventive services. **We strongly urge the Departments to issue clarifying guidance to protect patients from being charged cost-sharing when they receive recommended preventive services and address inappropriate charges for services that are integral to recommended preventive services.** Further, we encourage the Departments to conduct investigations and audit health insurers participating in the Federally Facilitated Marketplace and employer-sponsored plans to ensure that ACA preventive services are covered without cost-sharing.

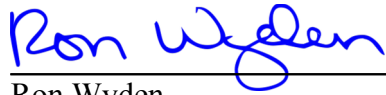
Sincerely,

10 85 F.R. 71142, 71174 (2020, November 6).

11 Makhoul, A.E., Hatcher, J.B., Sulieman, L., Johnson, D. and Anderson, D.M. (2023). Patient Cost Exposure And Use Of Preventive Care Among ACA-Compliant Individual Plans: Study examines patient cost exposure and use of preventive care for people enrolled in ACA-compliant individual plans. *Health Affairs*, 42(4), 531-536. <https://doi.org/10.1377/hlthaff.2022.00575>

12 Rosenthal E. (2024, January 24). *Ouch. That ‘free’ annual checkup might cost you. Here’s why.* Washington Post. <https://www.washingtonpost.com/opinions/2024/01/24/affordable-care-act-free-preventative-care/>

13 Liss, S. (2024, January 30). *The colonoscopies were free. but the ‘Surgical Trays’ came with \$600 price tags.* KFF Health News. <https://kffhealthnews.org/news/article/bill-of-the-month-free-colonoscopies-random-supplies-charge/>



Ron Wyden
United States Senator
Chairman, Committee on
Finance



Bernard Sanders
United States Senator
Chairman, Committee on
Health, Education, Labor, and
Pensions

CC: Administrator Chiquita Brooks La-Sure, Assistant Secretary Lisa M. Gomez, Director Ellen Montz