



**CONSORTIUM FOR CITIZENS  
WITH DISABILITIES**

September 28, 2010

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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: OCHIO-9995-IFC)**

Dear Director Angoff:

The Consortium for Citizens with Disabilities (CCD) appreciates the opportunity to comment on interim final rules that implement provisions of the Patient Protection and Affordable Care Act (Affordable Care Act or ACA) regarding the pre-existing condition insurance plan program. CCD is a coalition of approximately 100 national disability organizations working together to advocate for national public policy that ensures the self determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. Since 1973, the CCD has advocated on behalf of people of all ages with physical and mental disabilities and their families. CCD has worked to achieve federal legislation and regulations that assure that the 54 million children and adults with disabilities are fully integrated into the mainstream of society.

We are writing to express our concerns over the Office of Consumer Information and Insurance Oversight's (OCHIO) recently issued Interim Final Rule regarding the Pre-Existing Condition Insurance Plan (PCIP) program, as mandated by section 1101 of the Patient Protection and Affordable Care Act (ACA or Affordable Care Act). We are particularly concerned that the Interim Final Rule (1) fails to specifically address rehabilitation and habilitation services and devices, (2) does not explicitly include "prosthetics and orthotics" within the required benefits listed under 45 C.F.R. § 152.19(a), and (3) does not guarantee parity between mental health and substance use disorder benefits and medical and surgical benefits. As explained in detail below,

these omissions are contrary to plain language of the Affordable Care Act and congressional intent.

### **PCIPs Should Include Rehabilitation and Habilitation 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."<sup>1</sup> 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 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, all 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.

### **PCIPs Should Include Orototic and Prosthetic (O&P) Care**

Under the Interim Final Rule, a PCIP must cover durable medical equipment (DME) and services. But, prosthetics and orthotics, which are distinct from DME, are not specifically listed as required benefits. The omission of prosthetics and orthotics contravenes the legislative history underlying the essential health benefits package.

When the Affordable Care Act was being considered by the House of Representatives, Congressman George Miller, Chair of the Committee on Education and Labor, explained in his floor statement:

The term "rehabilitative and habilitative devices" includes durable medical equipment, prosthetics, orthotics, and related supplies....It is my expectation "prosthetics, orthotics, and related supplies" will be defined separately from "durable medical equipment" and the Secretary is not to define durable medical equipment for purposes of "in-home" use only.<sup>2</sup>

(emphasis added). See also a similar floor statement by Congressman Bill Pascrell, a co-chair of the Congressional Brain Injury Task Force.<sup>3</sup> These floor statements, published in the *Congressional Record*, are part of the legislative history of the Affordable Care Act.

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

<sup>2</sup> 156 Cong. Rec. H1882 (daily ed. March 21, 2010) (statement of Rep. Miller).

<sup>3</sup> 156 Cong. Rec. E462 (daily ed. March 23, 2010) (statement of Rep. Pascrell).

The floor statements clearly indicate that Congress intended essential health benefits to include both DME and prosthetics and orthotics.

While the majority of DME items are largely product or commodity-based, prosthetics and orthotics entail a high level of clinical service by educated and trained practitioners who design, fabricate and fit custom prostheses and orthoses. More specifically, “prosthetics” include artificial legs, arms, eyes, and breasts and “orthotics” include leg, arm, back and neck braces that are ordered by a health care provider, including replacements due to wear, damage, or a change in the person’s condition. Accordingly, we strongly urge OCIO to include “prosthetics and orthotics” as required benefits under the PCIP program, given that such items were intended by Congress to be included in essential health benefits. Thus, we recommend 45 C.F.R. § 152.19(a)(7) to read, “Durable medical equipment, prosthetics, orthotics, and supplies.”

In addition to fulfilling Congressional intent, coverage of prosthetics and orthotics would also be consistent with the scope of benefits offered by publicly supported health programs and private health plans. Virtually all the publicly supported health programs cover both DME *and* prosthetic and orthotic care, including Medicare, most Medicaid programs, TRICARE, health services offered by the Department of Veterans Affairs, and the standard option under the Federal Employee Health Benefits Program. Private insurance and typical employer-based health plans also offer both DME and prosthetic and orthotic care.

### **Mental Health Parity**

CCD is pleased that 45 C.F.R. 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 the PCIP to adhere to the standards in the Paul Wellstone-Pete Domenici Mental Health Parity and Addiction Equity Act (Wellstone-Domenici). 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. CCD would urge OCIO to include a similar requirement for coverage offered through the PCIP.

### **Affordability**

We applaud the fact that the Affordable Care Act and the Interim Final Rule excludes health status as basis for determining premiums charged under the PCIP program. However, we are also concerned that the Interim Final Rule does not make any provision for premium subsidies. CCD believes that an equitable health care system should, among other things, limit costs on a sliding scale based on income.<sup>4</sup> Although PCIP premium rates cannot exceed the standard risk rate in a state’s individual market, this cost restriction may still not be sufficient for low income individuals.

We recommend that OCIO develop policy options for subsidizing PCIP premiums. We understand that is only \$5 billion in federal funding for the temporary PCIP program.

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<sup>4</sup> Consortium for Citizens with Disabilities, “Principles for Health Care Reform from a Disability Perspective,” April 22, 2009. Available at [http://www.c-c-d.org/task\\_forces/health/CCD-Health-Reform-Principles42209.pdf](http://www.c-c-d.org/task_forces/health/CCD-Health-Reform-Principles42209.pdf).

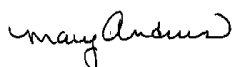
Accordingly, we believe that OCIO explore the possibility of implementing an idea suggested by Karen Pollitz. More specifically, in a January 2010 policy brief, Ms. Pollitz suggested that a national high risk pool program should permit premium assistance from third-parties (e.g., community health centers, hospitals, pharmaceutical companies) as well as states through existing subsidy programs for their current high-risk pools.<sup>5</sup> We think this is a promising idea, and respectfully request that OCIO consider its merits.

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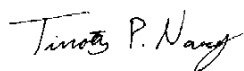
CCD believes the Interim Final Rule is a significant step forward for persons with disabilities and chronic conditions. Nonetheless, we believe that the rules could be further strengthened in significant ways. If you have any questions, please feel free to contact any of the Health Task Force Co-Chairs listed below. Thank you for your consideration of our comments.

Sincerely:

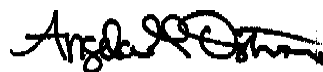
CCD Health Task Force Co-Chairs:



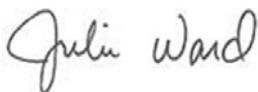
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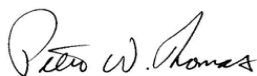
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<sup>5</sup> Karen Pollitz, "Issues for Structuring Interim High-Risk Pools," Kaiser Family Foundation, January 2010. Available at <http://www.kff.org/healthreform/upload/8040.pdf>.