June 20, 2016

Bianca Stoner
PO Box 40258
Olympia, WA 98504

Dear Ms. Stoner,

The Obesity Care Continuum (OCC) is pleased to provide the following comments in response to the April 29, 2016 proposed rule entitled: "Essential Health Benefits: Amendment to comply with recent federal guidance regarding coverage for obesity (R 2015-18)." We are pleased that the Washington State Office of the Insurance Commissioner (OIC) is being proactive in its efforts to ensure patient access to, and coverage of, intensive, multicomponent behavioral interventions for weight management, as recommended by the United States Preventive Services Task Force (USPSTF) from 2010 and 2012.

Our comments will focus on the need for clear state guidance regarding coverage of all medically necessary, evidence-based obesity treatment services – including FDA-approved pharmaceutical/device interventions and bariatric surgery. In addition, we will highlight how health plans continue to utilize discriminatory benefit design language, which is severely hampering patient access to those obesity-related services recommended by the USPSTF four years ago this month.

To address these concerns, the OCC urges the Washington State OIC to:

- Incorporate into the final regulations the language from the October 2015 Tri-Agencies guidance outlining both the intensity and frequency of covered intensive, multicomponent behavioral interventions for weight management; and
- Work to incorporate all medical necessary obesity treatment services within the state's EHB benchmark plan to ensure parity in coverage between obesity and other covered chronic disease states; and
- Review all current plan offerings -- both inside and outside of the state's health exchange -- to ensure that all non-grandfathered plans are covering these critical benefits as mandated by the Affordable Care Act (ACA).

December 22, 2015 Washington State OIC Expedited Rule

In reviewing the rulemaking process of the Washington State OIC in response to the October 2015 Tri-Agency guidance, we examined the December 22, 2015 expedited rulemaking where the OIC proposed inserting the following language into the state regulation to ensure that state health exchange plans provide proper coverage for preventive services for those with obesity:

viii: Obesity or weight reduction or control other than covered nutritional counseling
"However, for children ages six and over who qualify as obese, and for adult patients who have a body mass index of 30 kilograms/meter squared or higher, plans must cover intensive, multicomponent weight management behavioral interventions. Health plans must cover such services without cost-sharing. These services include but are not limited to:
(A) Group and individual sessions of high intensity; and
(B) Behavioral management activities, such as weight-loss goals."

We believe the OIC was correctly trying to suggest some of the criteria regarding intensive, multicomponent behavioral interventions for weight management, which were included in the USPSTF's June 2010 and 2012 recommendations as well as the October 2015 Tri-Agency guidance which included - verbatim – the language from the 2012 recommendation:

- 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.

Under the preventive services section of the ACA, patients are entitled to obesity screening and referral to multicomponent intensive behavioral therapy for obesity. Unfortunately, many individuals are not availing themselves of this benefit due to confusion on behalf of both patients and providers as to what qualified health plans cover when it comes to obesity treatment services – despite the clear guidance regarding intensity and frequency of such services outlined in the 2012 USPSTF recommendation.

Health plans continue to resist covering medically necessary and evidence-based obesity treatment services – fighting any kind of benefit specificity that would be advantageous… *to the patient.* For example, the February, 2016 comments of health plans responding to the expedited rule, argued against coverage of obesity treatment services as an essential health benefit and opposed any kind of specificity regarding obesity management services as outlined in the October 2015 Tri-Agencies guidance. For example, UnitedHealthcare stated that:

"The better amendment to the EHB rules is amending the language noting that the benchmark plan excludes obesity related services and therefore they are not required as part of the EHB by stating: "Obesity or weight reduction or control other than covered nutritional services. An issuer must cover the obesity screening related services as recommended for purposes of the USPSTF recommendations under section (9) of this rule." This treats this USPSTF recommendation in a way that is consistent with the remainder of the recommendations that must be covered as preventive services by not calling any of them out specifically, and eliminating the OIC's concern that the permitted exclusion language conflicts with the CMS FAQ's interpretation of the recommendation."

UnitedHealthcare continues:

"The FAQ clearly states that plans are not permitted to impose general exclusions that would encompass recommended preventive services, but does not require the OIC to adopt any regulation if the EHB for the state encompass recommended preventive services. The state's regulation –WAC 284-43-8781 –definitely encompass the recommended preventive services of

the USPSTF, as section (9) that outlines the coverage of preventive and wellness services specifically requires the USPSTF A and B recommendations to be covered."

April 29, 2016 Washington State OIC Proposed Rule

Not only does UnitedHealthcare call for continued exclusion of obesity treatment services, but the health plan also suggests that patients are really only entitled to "obesity screening related services." They make no mention of referral for intensive, multicomponent behavioral interventions as outlined by the USPSTF. Therefore, we are extremely concerned with the revised language being offered by the OIC in the April 29, 2016 proposed rule:

"(viii) Obesity or weight reduction or control other than:
(A) Covered nutritional counseling; and
(B) Obesity-related services for which the U.S. Preventive Services Task Force for prevention and chronic care has issued A and B recommendations on or before the applicable plan year, which issuers must cover under subsection (9) of this section."

By eliminating the specific examples from the USPSTF recommendations, the OIC will allow health plans to continue to utilize discriminatory benefit practices aimed at those with obesity. Additionally, the OIC should remove "Obesity" from the exclusionary language of the regulation and insert the following

"(viii) weight reduction or control other than:
(A) Covered nutritional counseling; and
(B) Obesity-related services for which the U.S. Preventive Services Task Force for prevention and chronic care has issued A and B recommendations on or before the applicable plan year, which issuers must cover under subsection (9) of this section; and
(C) medically necessary, evidence-based obesity treatment services.

Utilizing the above suggested language for the proposed rule would reinforce the fact that obesity is a multifactorial chronic disease that deserves to be treated in the same fashion as other chronic disease states are *treated* under the ACA and subsequently covered by health plans. For these reasons, the American Medical Association (AMA) joined other leading organizations in recognizing that obesity is a "disease state with multiple pathophysiological aspects requiring a range of interventions to advance obesity treatment and prevention; and that patients should have access to the full continuum of care of evidence-based obesity treatment modalities such as behavioral, pharmaceutical, psychosocial, nutritional, and surgical interventions."

Research has shown that evidence-based preventive services can save lives and improve health by identifying illnesses earlier, managing them more effectively, and treating them before they develop into more complicated, debilitating conditions, and that some services are also cost-effective. For these reasons, and to comply with the ACA, health plans not only cover screenings for heart disease, cancer, type 2 diabetes, hepatitis, depression and osteoporosis, they also provide EHB coverage for the full continuum of care surrounding these chronic diseases. Why should it be any different for obesity?

Finally, we note that the current Washington State EHB regulations do state that:

"Issuers must know and apply relevant guidance, clarifications and expectations issued by federal governmental agencies regarding essential health benefits. Such clarifications may include, but are not limited to, Affordable Care Act implementation and frequently asked questions jointly issued by the U.S. Department of Health and Human Services, the U.S. Department of Labor and the U.S. Department of the Treasury."

If this is truly the case, we would expect that health plans currently being offered on the state health exchange would include the robust coverage language from the October 2015 Tri-Agencies FAQ. We encourage the OIC to carefully scrutinize these plans to ascertain that they are actually meeting the expectations of this critical guidance.

Additionally, we believe the OIC should also evaluate health plans for coverage of other evidence-based obesity treatment services such as bariatric surgery and FDA-approved obesity drugs given that health plans should already be covering these services under the broad EHB categories of "hospitalization" and "prescription drugs," respectively. Finally, we urge the OIC to recognize that treating obesity can lead to the prevention or amelioration of so many other obesity-related comorbidities. For example, the growing scientific data surrounding the use of bariatric surgery to both prevent and treat type 2 diabetes.

Should you have any questions or need additional information, please feel free to contact me either by telephone at 571-235-6475 or via email at chris@potomaccurrents.com. Thank you.

Sincerely,

Christopher Gallagher
Washington Coordinator
Obesity Care Continuum

About the Obesity Care Continuum:

The leading obesity advocate groups founded the Obesity Care Continuum (OCC) in 2010 to better influence the healthcare reform debate and its impact on those affected by overweight and obesity. Currently, the OCC is composed of the Obesity Action Coalition (OAC), the Obesity Society (TOS), the Academy of Nutrition and Dietetics (AND), the American Society for Metabolic and Bariatric Surgery (ASMBS), and the Obesity Medicine Association (OMA). With a combined membership of more than 125,000 patient and healthcare professional advocates, the OCC covers the full scope of care from nutrition, exercise and weight management through pharmacotherapy to device and bariatric surgery. Members of the OCC also challenge weight bias and stigma-oriented policies – whenever and wherever they occur.