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State Mandated Insurance Coverage for Tobacco Use Cessation Programs

Koop-Kessler Report

- In 1997, Congress asked former Surgeon General C. Everett Koop and former Food and Drug Administration Commissioner David Kessler to convene a committee to review U.S. tobacco policy. The committee's final report outlined a "blueprint for the future of tobacco policy and public health."¹ Among its other proposals, the report recommended mandated insurance coverage of all tobacco use cessation programs and services.² According to the report, coverage should be provided as a "lifetime benefit rather than as a one-time opportunity to 'kick the habit,'" and should be required under "all health insurance, managed care, and employee benefit plans, as well as all Federal health financing programs (e.g., Medicare and Medicaid)."³

State Level Benefit Requirements

The following six states mandate some form of tobacco use cessation coverage. The level of the coverage varies by state

- **Colorado**
 - Colorado requires that basic health care plans cover certain preventive services, including tobacco cessation programs. All plan members are entitled to one "smoking cessation education program benefit under physician supervision or as authorized by plan per lifetime, not to exceed \$150 payment by insurer."⁴ Some small group plans are exempted from this requirement.⁵
- **New Jersey**
 - In 2000, New Jersey enacted the New Jersey Health Wellness Promotion Act, requiring that all commercial health plans include annual "lifestyle behaviors" consultations as part of their basic coverage.⁶ Such consultations include smoking cessation programs for all persons 20 years or older.⁷ Payment for such benefits are not to exceed "\$125 a year for each person between the ages of 20 to 39; \$145 a year for each man age 40 and over; and \$235 a year for each woman age 40 and over"⁸ New Jersey has similar requirements

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for group policies,⁹ individual policies,¹⁰ medical service corporations,¹¹ and health service corporations.¹²

- **North Dakota**

- According to the 1998 Survey of State Policy on Nicotine Addiction Treatment, North Dakota requires small and large employers to cover smoking cessation programs up to \$150 per person per lifetime if the programs are supervised by a physician.¹³ However, the North Dakota mandate is not included in any statute or formal regulation. Instead, it is contained on the “standard form” insurance policy that is issued by the North Dakota Insurance Department.¹⁴ The North Dakota Insurance Department explained that “all major medical insurers are required to make [the benefit] available to individuals or employers in the individual and group markets. Coverage is only available on a guaranteed-issue basis for the small (2-50) employer market and the employer has the option of purchasing any plan, including the standard plan. . . .”¹⁵

- **New Mexico**

- In 2003, New Mexico enacted a statute requiring that all health insurance policies issued in the state that provide maternity benefits must also provide tobacco cessation benefits.¹⁶ These benefits must include “(1) diagnostic services necessary to identify tobacco use, use-related conditions and dependence . . . (2) two 90-day courses of pharmacotherapy (Nicotine Replacement Therapy and other pharmaceuticals) per calendar year . . . [and] (3) a choice of cessation counseling of up to 90 minutes total provider contact time or two multi-session group programs per calendar year.”¹⁷ Exempt from coverage are short-term policies, policies for travel, and policies that cover only specific diseases.¹⁸

- **Maryland**

- In 2005, Maryland borrowed from New Mexico’s statute and enacted a law requiring that any insurer, non-profit health service plan, or health maintenance organization that provides prescription drug coverage to individuals or groups in the state “shall provide coverage for (i) . . . any drug that is approved by the United States Food and Drug Administration as an aid for the cessation of the use of tobacco products; and is obtained under a prescription written by an authorized prescriber; and (ii) two 90-day courses of nicotine replacement therapy during each policy year.”¹⁹

- **Rhode Island**

- In 2006, Rhode Island enacted statutes requiring any insurer that provides medical coverage for doctors’ office visits or comprehensive medical coverage to include coverage for smoking cessation treatment.²⁰ Coverage must include “the use of an over-the-counter . . . or prescription . . . nicotine replacement therapy, when . . . used in combination with an annual outpatient benefit of eight (8) and one-half (1/2) hour smoking cessation counseling sessions provided by a qualified practitioner for each covered individual.”²¹ Rhode Island’s mandate exempts insurers whose plans do not include prescription drug coverage.²²

- Four states failed in their efforts to codify insurance coverage for tobacco use cessation programs.
 - New York,²³ Wisconsin,²⁴ and Oklahoma²⁵ unsuccessfully introduced legislation that would require insurance coverage of tobacco use cessation programs. and In 2005, California’s House and Senate passed a new bill mandating tobacco cessation coverage.²⁶ The bill would have required that “[a] health care service plan contract . . . that provides outpatient prescription services, shall include two courses of treatment in a 12-month period including personal counseling, which may be telephone or individual, and FDA-approved medication for tobacco cessation, including prescription and over-the-counter medications.”²⁷ The bill would have also limited co-payments for tobacco cessation drugs to \$15. Governor Schwarzenegger, however, vetoed the bill.²⁸

Cessation Benefits Are Cost Effective

- A 2006 study published in the *American Journal of Managed Care* estimated the costs and benefits to an insurance company covering smoking cessation treatments. The model showed that insurance companies offering lower cost cessation benefits would save money within eight years.²⁹ The study projected that after twenty years, per member per month net costs (after considering health savings) would range from a savings of \$0.22 to a cost of \$0.43, depending upon the plan chosen.³⁰ Most plan options showed a net savings.
- From the employer’s perspective, tobacco cessation benefits are either cost-saving or cost-neutral. According to the Centers for Disease Control (CDC), “cost/expenditure equalizes at 3 years; benefits exceed costs by 5 years.”³¹
- The Next Generation California Tobacco Control Alliance estimates that the cost of providing tobacco use cessation benefits in HMO health care packages would be between \$0.22 and \$0.43 per month per member, depending upon usage and the level of coverage.³² The CDC places the cost even lower, estimating it would cost between \$0.10 and \$0.40 per member per month, to provide a comprehensive benefit.³³

¹ C. Everett Koop & D.A. Kessler, *Final Report of the Advisory Committee on Tobacco Policy and Public Health*, 6 Tobacco Control 254, 255 (1997), available at http://www.aaphp.org/WebLinks/Koop-Kessler_Dec03Tobc.pdf.

² *Id.* at 257.

³ *Id.*

⁴ 3 Colo. Code Regs. § 702-4 (2007), available at <http://www.dora.state.co.us/insurance/regs/4-6-5.pdf> (see , Amended Regulation 4-6-5 Attachment 1).

⁵ Colo. Rev. Stat. § 10-16-105 (2006).

⁶ N.J. Stat. Ann. § 17:48-6i (2007).

⁷ *Id.*

⁸ *Id.*

⁹ N.J. Stat. Ann. § 17B:27-46.1h (2007).

¹⁰ *Id.* § 17B:26-2.1h.

¹¹ *Id.* § 17:48A-7h.

¹² *Id.* § 17:48E-35.6.

¹³ Professional Assisted Cessation Therapy, *Reimbursement for Smoking Cessation Therapy: A Healthcare Practitioner’s Guide* 15 (3d ed. 2002), available at <http://www.endsmoking.org/resources/reimbursementguide/pdf/reimbursementguide-3rd-edition.pdf>.

¹⁴ Ronald Scott & Phyllis Gingiss, *Health Insurance Coverage for Tobacco Dependence – Part I: Background Literature Review, Legal and Policy Analysis* 32 (2003), available at http://www.dshs.state.tx.us/tobacco/reports/uofh/UH_Hlth_Insur_Part1_LitRev.pdf.

¹⁵ *Id.*

¹⁶ N.M. Admin. Code R. § 13.10.18.8 (Weil 2007).

¹⁷ *Id.*

¹⁸ N.M. Stat. Ann. § 59A-22-44 (LexisNexis 2007)

¹⁹ Md. Code Ann., Ins. § 15-841 (West 2007).

²⁰ R.I. Gen Laws § 27-18-66 (2006).

²¹ *Id.*

²² *Id.*

²³ S.B. 6461, 223d Leg., Reg. Sess. (N.Y. 1999). BB T1 pp. 106-07, 224

²⁴ S.B. 115, 1999 Leg., Reg Sess. (Wis. 1999). BB T1 pp. 106-07,239

²⁵ H.B. 2613, 49th Leg., Reg. Sess. (Okla. 2004). BB T1 pp. 106-07, 228

²⁶ S.B. 576, 2005 Leg., Reg. Sess. (Cal. 2005). BB T1 pp. 106-07, 201

²⁷ Veto Message, S.B. 576, 2005 Leg., Reg. Sess. (Cal. 2005).

²⁸ Cal. S.B. 576. BB pg. 113

²⁹ Douglas E. Levy, *Employer-Sponsored Insurance Coverage for Smoking Cessation Treatments*, Am. J. Managed Care, 553, 557-58 (2006), available at

http://www.ajmc.com/files/articlefiles/AJMC_06Levy553to562.pdf.

³⁰ *Id.*

³¹ Centers for Disease Control and Prevention, *Coverage for Tobacco Use Cessation Treatments* 3 (2003), available at http://www.cdc.gov/tobacco/quit_smoking/cessation/00_pdfs/ReimbursementBrochureFull.pdf.

³² Next Generation California Tobacco Control Alliance, *Designing a Model Cessation Benefit for Managed Care Coverage* (2002), available at <http://www.tobaccofreealliance.org/pdfs/scfinal.pdf>.

³³ Centers for Disease Control and Prevention, *supra* note 31, at 3.