



## Authors

**Thora A. Johnson**  
tajohnson@Venable.com  
410.244.7747

**Martha Jo Wagner**  
mjwagner@Venable.com  
202.344.4002

**Jennifer Spiegel Berman**  
jsberman@Venable.com  
410.244.7756

**Our Employee Benefits and Executive Compensation attorneys have a diversified national practice. We assist clients of all shapes and sizes - businesses in virtually every industry sector, 501(c)(3)s and other tax-exempt organizations, and governmental entities under 414(d) - on compensation and benefit-related issues.**

## New Preventive Care Coverage Rules Under Health Care Reform

The Departments of Labor, Treasury, and Health and Human Services recently issued rules that will require non-grandfathered, calendar-year, group health plans to meet new coverage requirements for preventive care beginning on January 1, 2011.<sup>1</sup> (Click [here](#) for a Venable alert with more information on whether your group health plan can and should maintain grandfathered status.) In planning for the 2011 plan year, plan sponsors will need to make design changes in light of these new coverage requirements and they may affect plan pricing.

### What Level of Coverage Must Group Health Plans Provide for Preventive Care?

Non-grandfathered group health plans must provide coverage for certain items and services classified as preventive care, as defined below, and may not impose any cost-sharing requirements with respect to those items and services. This means that plans must provide first-dollar coverage – coverage without the imposition of a co-payment, co-insurance, or a deductible – for any item or service defined as preventive. Notably, this requirement only applies to items or services provided to plan participants on an in-network basis. Coverage limitations and cost-sharing requirements may continue to be imposed with respect to preventive care obtained on an out-of-network basis.

### What Items and Services Constitute Preventive Care?

Many plans currently provide benefits that they classify as preventive. Such plan classifications may or may not, however, meet the definition of preventive care for purposes of these new coverage rules. The preventive care coverage rules define the preventive care that non-grandfathered group plans must provide as:

- 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.
- Immunizations for routine use in children, adolescents, and adults that have in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.
- With respect to infants, children, adolescents, and women, evidence-informed preventive care and screenings provided for in the comprehensive guidelines supported by the Health Resources and Services Administration.

A complete list of these items and services can be found on the government's website [here](#). The list will be kept current as the underlying recommendations are changed and updated. Going forward, plan design changes based on new recommendations will not be required to be implemented until the first plan year beginning on or after such new recommendation has been in effect for one year.

### How are the Preventive Care Rules applied When a Recommended Preventive Service is Provided at an Office Visit?

In practice, it may be difficult for group health plans to differentiate between preventive care services and other medical services provided to plan participants. If a plan is billed separately (or otherwise receives separate encounter data) for preventive care services received during an office visit, first-dollar coverage can be provided for such services and the plan's otherwise applicable cost-sharing requirements can be applied to the fee for the office visit itself.

If, however, these charges are bundled, the plan must look to the primary purpose of the office visit. If the primary purpose of the office visit is the delivery of a preventive care service, first-dollar coverage must be provided for the entire office visit. If, instead, the delivery of a preventive care service is not the primary purpose of the office visit, the plan's otherwise applicable cost-sharing requirements may be applied to the entire bill for the visit.

### Can a Group Health Plan Place any Limitations on the Availability of Preventive Care?

Group health plans are allowed to apply reasonable medical management techniques with respect to required preventive services where the underlying recommendation does not specify the frequency, method, treatment, or setting for the provision of service. Furthermore, to the extent that the care is not

within the rule's definition of preventive care but rather solely within the group health plan's definition, the plan can impose its otherwise applicable cost-sharing requirements.

\*\*\*\*\*

If your plan has elected to forego its grandfathered plan status for its next plan year, now is the time to identify, price, and implement the plan design changes necessary to comply with these preventive care coverage rules. We are happy to assist you with this process and with any other employee benefit matter.

---

[1] The interim final rules issued by these agencies use the term "preventive services or items" rather than the more frequently used term "preventive care" and can be found at 75 *Federal Register* 41726 (July 19, 2010) (to be codified at 26 *C.F.R.* pt. 54, 29 *C.F.R.* pt. 2590, 45 *C.F.R.* pt. 147). They apply to plan years beginning on or after September 23, 2010.

---

Please contact any of the attorneys in our [Employee Benefits & Executive Compensation](#) group if you have any questions regarding this alert.

<b>Harry Atlas</b> <a href="mailto:hiatlas@Venable.com">hiatlas@Venable.com</a> 410.528.2848	<b>Jennifer Berman</b> <a href="mailto:jsberman@Venable.com">jsberman@Venable.com</a> 410.244.7756	<b>Brad Cohen</b> <a href="mailto:bcohen@Venable.com">bcohen@Venable.com</a> 310.229.9942	<b>Robin Gilden</b> <a href="mailto:rcgilden@Venable.com">rcgilden@Venable.com</a> 310.229.9967
<b>Kenneth Hoffman</b> <a href="mailto:krhoffman@Venable.com">krhoffman@Venable.com</a> 202.344.4810	<b>Meredith Horton</b> <a href="mailto:mphorton@Venable.com">mphorton@Venable.com</a> 202.344.8290	<b>Thora Johnson</b> <a href="mailto:tajohnson@Venable.com">tajohnson@Venable.com</a> 410.244.7747	<b>Jessica Kuester</b> <a href="mailto:jekuester@Venable.com">jekuester@Venable.com</a> 202.344.4516
<b>Andrea O'Brien</b> <a href="mailto:aobrien@Venable.com">aobrien@Venable.com</a> 301.217.5655	<b>Barbara Schlaff</b> <a href="mailto:beschlaff@Venable.com">beschlaff@Venable.com</a> 410.244.7494	<b>Lisa Tavares</b> <a href="mailto:latavares@Venable.com">latavares@Venable.com</a> 202.344.4075	<b>Martha Jo Wagner</b> <a href="mailto:mjwagner@Venable.com">mjwagner@Venable.com</a> 202.344.4002
<b>John Wilhelm</b> <a href="mailto:jawilhelm@Venable.com">jawilhelm@Venable.com</a> 703.760.1917			

---

If you have friends or colleagues who would find this alert useful, please invite them to subscribe at [www.Venable.com/subscriptioncenter](http://www.Venable.com/subscriptioncenter).

CALIFORNIA MARYLAND NEW YORK VIRGINIA WASHINGTON, DC

1.888.VENABLE | [www.Venable.com](http://www.Venable.com)

©2010 Venable LLP. This alert is published by the law firm Venable LLP. It is not intended to provide legal advice or opinion. Such advice may only be given when related to specific fact situations that Venable has accepted an engagement as counsel to address.