January 3, 2017

Andrew Slavitt
Acting Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Sent Electronically via marketreform@cms.hhs.gov

Dear Mr. Slavitt,

I am writing on behalf of the National Association of Health Underwriters (NAHU), a professional association representing more than 100,000 licensed health insurance agents, brokers, general agents, consultants and employee benefit specialists nationally. The members of NAHU work on a daily basis to help individuals and employer groups purchase, administer and utilize health insurance coverage. Our association appreciates the willingness of the Departments of Labor, Health and Human Services and Treasury ("the Departments") to seek comments from stakeholders about implementation of the Patient Protection and Affordable Care Act (ACA) and the implementation guidance you have issued to date. Specifically, we are writing about "FAQs on Affordable Care Act Implementation, Part 34" issued on October 27, 2016, and your request for information and comments about coverage requirements relative to preventive care and, specifically, tobacco-cessation interventions.

NAHU members help employers of all sizes offer and manage both fully insured and self-insured group coverage options. Providing employees and their dependents access to preventive-care services, including tobacco-cessation services, is an important part of group health benefit design. Since the United States Preventive Services Task Force (USPSTF) updated its recommendations for tobacco-cessation interventions on September 22, 2015, health insurance issuers and employers have been in great need of guidance about how these updated USPTF guidelines impact the ACA requirement that health insurance issuers and group health plans include first-dollar coverage of preventive-care services. In 2014, a safe harbor in FAQs stated that the Departments will consider plans and issuers to be in compliance with the requirement to cover tobacco use counseling and interventions if they met specific coverage criteria based on the 2009 USPSTF tobacco cessation guidelines. Since the new guidelines were issued, now over 15 months ago, it has been very unclear to issuers and employer group health plans alike whether the existing coverage safe harbor is still applicable.

Given that more than one year has passed since the updated guidelines were released and all employer plans and individual plans are now in a new plan or policy year, health plans and issuers truly need the Departments to clarify as soon as possible what tobacco-cessation items and services must be provided without cost sharing to comply with the updated recommendation. NAHU strongly suggests that the Departments issue updated guidance on this topic immediately, given that issuers of fully insured coverage are already finalizing product-design components for the 2018 plan year since the product and rate approval process for the 2018 policy year begins this spring. Employer groups that offer and operate self-funded group coverage plans will also need time to implement required changes to coverage design if the safe harbor is adjusted.

Additionally, we request that any changes to the preventive services safe harbor for tobacco-cessation coverage be accompanied by an enforcement delay until the next plan or policy year following one year after the issuance of updated guidance so that issuers that have already set their plan designs for 2017 do not need to change those plan-design components mid-year and all plans do not need to make material modifications to their coverage offerings in the middle of a plan year.

As for the design of the safe harbor itself, NAHU believes plans and issuers should be permitted to use reasonable medical-management techniques to determine which specific categories of FDA-approved pharmacotherapy interventions will be covered without cost sharing, as a means of cost containment. While preventive care must be provided to beneficiaries without additional cost sharing, of course that doesn't mean the interventions are free in and of themselves. Plans and issuers still must pay for the costs of this medical care and, by necessity, often reflect those costs in increased premiums or reduction of other services. If reasonable means of medical management are not allowed, then the cost of coverage will just increase for consumers in other areas, making medical care overall less accessible to American consumers. Additionally, we suggest that the Departments strongly consider the new EEOC requirements for employer plans relative to application of the ADA and GINA to wellness programs and tobacco-cessation program premium discounts when designing this coverage safe harbor. The inclusion of certain types of tobacco-cessation treatment elements in an employer group tobacco-cessation wellness incentive program, such as blood tests to document efficacy, can trigger increased notification and reasonable design requirements under the new rules, so we believe that any expanded safe harbor should be designed with these rules in mind.

Thank you for the opportunity to provide input on preventive care coverage requirements as they relate to tobacco-cessation services. Our membership looks forward to updated guidance so that we can help individuals and employer groups ensure appropriate access to these services. If you have any questions about our comments or need more information, please do not hesitate to contact me at either (202) 595-0787 or jtrautwein@nahu.org.

Sincerely,

Janet Stokes Trautwein
Executive Vice President and CEO
National Association of Health Underwriters