

Breastfeed Chicago

Chicago, IL

www.breastfeedchicago.org

June 15, 2015

Acting Director James A. Stephens
Illinois Department of Insurance
320 W. Washington Street, 4th Floor
Springfield, Illinois 62767-0001

Dear Director Stephens:

As an organization dedicated to supporting and advocating for breastfeeding women in Illinois, we have encountered numerous issues that our clients face when attempting to obtain coverage for lactation services and supplies that are required by the Patient Protection and Affordable Care Act. Based on our experiences, and documented by a recent survey of our clients, 43 of whom made claims for lactation services and 85 of whom made claims for lactation supplies in 2014 or 2015 to their non-grandfathered health care plans, the main problems with the coverage Illinois' women commonly experience are:

- A lack of in-network providers that have lactation-specific education (lactation counselors/consultants) so women can obtain lactation services. Our survey showed that over 80% of respondents were unable to obtain a list of providers that possess lactation-specific training from their insurance companies.
- Having claims denied after seeing an out-of-network provider even though the insurer did not have any in-network providers available. 35% of respondents to our survey indicated their claims for lactation counseling/consulting were denied. Of those denials, over 60% were denied because they were told the service was either not eligible or the provider was out-of-network.
- Being charged a copayment, deductible, or co-insurance for the services when claims for lactation counseling/consulting are reimbursed. 28% of our respondents who were able to obtain a reimbursement from their company indicated that they were charged some sort of cost-sharing when their insurance companies did reimburse them for lactation counseling/consulting service expenses.
- Difficulty being reimbursed for the appropriate type of breast pump. Feedback from our clients indicates that insurers are sometimes failing to reimburse for the rental of a hospital-grade breast pump when there is a medical need, such as when baby is in the neonatal intensive care unit (NICU) and special equipment is necessary to establish mother's milk production while separated from her baby. Also, 21% of our survey respondents indicated that some insurers are providing only a manual breast pump when a mother returns to the workplace after the birth of her baby, although a double-electric breast pump is indicated in this situation.

Under § 1001 of the ACA, which amends § 2713 of the Public Health Services Act, all non-grandfathered group health plans and health insurance issuers offering group or individual coverage shall provide coverage of certain preventative services for women with no cost-sharing.ⁱ This includes "comprehensive lactation support and counseling and costs of renting or purchasing breastfeeding equipment for the duration of breastfeeding."ⁱⁱ This means Illinois' women either cannot access these services, even though

they are a required benefit, or women pay the full cost of lactation services out-of-pocket. Both scenarios explicitly violate § 2713.

Some carriers reimburse women for lactation services obtained out-of-network, correctly following federal law and guidance. Other carriers impermissibly limit coverage of lactation services, and only provide coverage to women while they are in the hospital. The ACA requires this coverage to be provided for the duration of breastfeeding, therefore insurance carriers must establish a network of lactation providers that possess lactation-specific training so that women can obtain this benefit after being discharged from the hospital. Furthermore, federal guidance clarifies that if a plan does not have an in-network provider who can provide a preventive health benefit, the plan must cover the service when performed by an out-of-network provider without cost-sharing.ⁱⁱⁱ

In some instances, insurance carriers place restrictions or limitations that, while not explicitly addressed by federal regulation or guidance, severely undermine the preventive services requirement. Examples include coverage that limits breast pumps to a manual pump only, or excludes hospital grade pumps in any circumstance. The Institute of Medicine has identified access to breast pumps and instruction in breastfeeding as critical factors that influence whether a woman initiates breastfeeding and the duration of breastfeeding.^{iv} Merely providing coverage of a manual breast pump conflicts with the intent of the ACA's preventive services requirement.

Additionally, women may need access to a hospital grade pump for various reasons. Women who have newborns in the Neonatal Intensive Care Unit (NICU) and are separated from their infant cannot initiate breastfeeding with a manual pump. Women in these circumstances will require an electric hospital grade pump to establish their milk supply.¹ The American Academy of Pediatrics (AAP) strongly encourages feeding infants who are in the NICU human milk.^v Further, AAP recommends that breast pump coverage include all grades of breast pumps (manual, electric, hospital grade), indicating that “[m]anual breast pumps may not be appropriate in all situations and benefit plans should include coverage for electric and hospital grade breast pumps. Double electric or hospital grade pumps are often more efficient to maintain milk supply for mothers that return to work.”^{vi}

Women returning to work also may find a manual pump incompatible with their need to express milk quickly and efficiently during the work day—which conflicts with the intention to increase both initiation and duration of breastfeeding as articulated by the Institute of Medicine. Insurance carriers that employ this limitation and exclude all hospital grade pumps, or limit coverage to manual pumps, are undermining the coverage requirement.

Our survey data suggests that Illinois' women are experiencing violations of the Affordable Care Act by Illinois' insurance carriers and that, in some cases, provided benefits are insufficient for women's needs and thus undermine the requirements of preventative services. Our findings are supported at the national level by a recent report released by the National Women's Law Center (NWLC). NWLC reviewed the Summary of Benefits and Coverage for hundreds of plans nationally and documented a similar pattern of violations and undermining of the coverage requirements. The report is available online at: http://www.nwlc.org/sites/default/files/pdfs/final_nwlc_breastfeedingreport2015_0.pdf

Breastfeed Chicago would first like to request a meeting with your office to hear about what next steps will be taken to ensure Illinois' insurance plans are immediately brought into compliance with the ACA. Title XXVII of the Public Health Service Act (PHS Act) contemplates that the states will exercise

¹ Some carriers provide coverage of a hospital grade pump after getting a prescription or similar documentation from their doctor or healthcare provider.

primary enforcement authority over health insurance issuers in the group and individual markets to ensure compliance with health insurance market reforms.^{vii}

Second, we ask that the Illinois Department of Insurance address these violations and crucial gaps in coverage by issuing a bulletin that:

- Requires insurance carriers to establish a sufficient network of lactation service providers that carry sufficient lactation-specific education so women can obtain timely in-network lactation services at no cost-sharing, within a reasonable distance;
- Clarifies that until an insurance carrier establishes a sufficient network of lactation providers, women must be able to obtain this service out-of-network, as required by law;
- Clarifies that lactation services, as a part of preventative services for women, must be covered at no cost-sharing; and
- Provides guidance to indicate coverage limited to a manual pump is insufficient and violates § 2713 and that there are instances when the rental of an additional hospital-grade pump may be medically indicated, as determined by a health care professional.

Thank you for your attention in this matter, and we look forward to working with you to ensure insurance carriers in Illinois are complying with federal law and that restrictions and limitations on plans do not undermine the intent of preventative services. We can be reached at the address above, or phone [REDACTED]

Sincerely,
Katrina Pavlik, Board Chair



Encl(1): Listing of Breastfeed Chicago client's insurance companies

ⁱ 42 U.S.C. § 300gg-13.

ⁱⁱ See DEP'T OF LABOR, *Frequently Asked Questions about the Affordable Care Act (Part XII)*, Question 20, (Feb. 20, 2013) <http://www.dol.gov/ebsa/faqs/faq-aca12.html>.

ⁱⁱⁱ *Id.* at Question 3.

^{iv} Institute of Medicine. (2011). *Clinical Preventive Services for Women: Closing the Gaps*. Washington, DC: National Academies Press.

^v American Academy of Pediatrics Section on Breastfeeding, Breastfeeding and the Use of Human Milk. *Pediatrics* Vol. 129 No. 3 March 1, 2012 pp. e827-e841 at <http://pediatrics.aappublications.org/content/129/3/e827.full?sid=ee79f8ed-6856-4f36-9ef2-d83a88178219>

^{vi} American Academy of Pediatrics, access at <http://www2.aap.org/breastfeeding/files/pdf/McInerneyLettertoPayers-BreastPumps.pdf>

^{vii} 42 U.S.C. §300gg-22(a)(1), access at <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/compliance.html>