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GOOD HEALTH AND LOW COSTS: WHY THE PPACA'S PREVENTIVE CARE PROVISIONS MAY NOT PRODUCE EXPECTED OUTCOMES

*Adam Marks**

Introduction

The modern Hippocratic Oath reads, "I will prevent disease whenever I can, for prevention is preferable to cure."[1] The concept of preventive care is not new to the healthcare arena. In recent years, high-profile politicians including Hillary Clinton, John Edwards, Mike Huckabee, and Barack Obama have specifically addressed the importance of preventive care in the U.S. healthcare system.[2] This topic has received more attention, however, with the recent passage of the Patient Protection and Affordable Care Act ("PPACA"). In accordance with the PPACA, the Departments of Health and Human Services, Labor, and the Treasury recently issued new regulations requiring private healthcare plans to cover preventive services and to eliminate cost-sharing for preventive care.[3] New health policies beginning on or after September 23, 2010 are required to cover preventive care, and can no longer charge patient beneficiaries copayments, co-insurance, or deductibles for these services.[4]

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[1] Joseph W. Stubbs, *Does Prevention Improve Health Care Outcomes and Lower Costs?*, KEVINMD.COM, July 10, 2010, http://www.kevinmd.com/blog/2010/07/prevention-improve-health-care-outcomes-costs.html.

[2] Joshua T. Cohen et al., *Does Preventive Care Save Money? Health Economics and the Presidential Candidates*, NEW ENG. J. MED. 358, 661-63 (2008), *available at* http://www.nejm.org/doi/full/10.1056/NEJMp0708558.

[3] *Background: The Affordable Care Act's New Rules on Preventive Care*, HEALTHCARE.GOV, July 14, 2010, http://www.healthcare.gov/law/about/provisions/services/background.html [hereinafter *Act's New Rules*].

[4] *Id.*

Commentators suggest that prevention will help to remedy problems that the healthcare system currently faces, particularly enormous costs and a populace in poor health.[5] Indeed, President Barack Obama and First Lady Michelle Obama have both expressed the belief that a focus on prevention will afford our nation the opportunity to improve the health of all Americans while simultaneously reducing overall healthcare costs.[6] While these goals are certainly admirable, the reality is that prevention is a "very important and powerful tool, but one that requires careful, evidence-based analysis, not politicization."[7] This Article will briefly examine the current state of the U.S. healthcare system as it relates to costs and disease. The Article will then provide a detailed explanation of the PPACA provisions and interim final regulations relating to preventive care. Finally, this Article will provide an analysis of the new law as it relates to improving general health in America while decreasing the cost of care.

I. Healthcare Costs and Chronic Disease at a Glance

Healthcare costs in the United States have been rising for several years.[8] In 2008, healthcare expenditures surpassed $2.3 trillion – roughly eight times the amount spent in 1980.[9] Also in 2008, healthcare spending accounted for approximately 16.2% of the overall GDP, a figure that is among the highest of all industrialized nations.[10] Family premiums for employer-sponsored healthcare plans have increased by 131% since 1999, and, generally, healthcare costs continue to grow at a much faster pace than wages.[11] Given these figures, it is no surprise that cost-control has been a focus of recent healthcare discussions.

A closer examination of healthcare expenditures in the United States reveals that more than 75% of spending is

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[5] *See Id.* (noting that the idea that preventive care will improve Americans' health while saving money enjoys "strong bipartisan support among elected officials as well as among many sectors of society – teachers, business leaders, doctors, nurses and parents").

[6] *Id.*

[7] Stubbs, *supra* note 1.

[8] Background Brief, U.S. Health Care Costs, KAISEREDU.ORG, http://www.kaiseredu.org/Issue-Modules/US-Health-Care-Costs/Background-Brief.aspx (last updated March 2010).

[9] *Id.*

[10] *Id.*

[11] *Id.*

dedicated to chronic diseases.[12] These diseases, according to experts, are often preventable.[13] The Centers for Disease Control and Prevention ("CDC") defines chronic diseases as "noncommunicable illnesses that are prolonged in duration, do not resolve spontaneously, and are rarely cured completely."[14] At present, chronic diseases are responsible for seven in ten deaths each year in the United States, and approximately 133 million Americans live with at least one chronic disease.[15] Alarmingly, the percentage of American children and adolescents with chronic health conditions has increased from 1.8% in 1960 to more than 7% in 2004.[16] Importantly, several preventive services related to key chronic diseases are covered, either directly or indirectly, by the new regulations.

II. The PPACA and the Preventive Care Regulations

The PPACA was enacted on March 23, 2010, and, in addition to its provisions on preventive care, seeks to make significant changes to the country's healthcare system.[17] Regarding preventive care, section 1001 of the PPACA adds section 2713 to the Public Health Service Act ("PHSA") and reads in part:

> A group health plan and a health insurance issuer offering group or individual health insurance coverage shall, at a minimum provide coverage for and shall not impose any cost sharing requirements for: (1) 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; (2) immunizations that have in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention with respect to the individual involved; (3)

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[12] *Chronic Diseases: The Power to Prevent, The Call to Control: At A Glance 2009*, CDC, Dec. 17, 2009, http://www.cdc.gov/chronicdisease/resources/publications/AAG/chronic.htm [hereinafter CDC].

[13] *The Affordable Care Act's New Rules on Preventive Care and You*, HEALTHCARE.GOV, July 14, 2010, http://www.healthcare.gov/law/provisions/preventive/moreinfo.html [hereinafter *New Rules and You*].

[14] CDC, *supra* note 12.

[15] *Id.*

[16] *Id.*

[17] *See generally* 45 C.F.R. § 147.130 (2011).

> with respect to infants, children, and adolescents, evidence-informed preventive care and screenings provided for in the comprehensive guidelines supported by the Health Resources and Services Administration; [and] (4) with respect to women, such additional preventive care and screenings not described in paragraph (1) as provided for in comprehensive guidelines supported by the Health Resources and Services Administration for purposes of this paragraph.[18]

The Departments of Health and Human Services, Labor, and the Treasury issued interim final regulations regarding the implementation of this provision on July 19, 2010.[19] Generally, the regulations apply to group health plans and group health insurance issuers, as well as individual health insurance issuers, for plan or policy years beginning on or after September 23, 2010.[20] Furthermore, the regulations prohibit cost-sharing requirements with respect to those preventive services identified in section 2713.[21] The abolishment of such cost-sharing will, generally speaking, eliminate copayments, co-insurance, and deductibles for patients partaking in covered preventive services.

In accordance with section 2713, the U.S. Preventive Services Task Force ("USPSTF") has a significant role in determining which preventive services are covered.[22] The USPSTF reviews scientific evidence related to the effectiveness and appropriateness of clinical preventive services for the purpose of developing recommendations.[23] The USPSTF is composed of a panel of non-federal experts in prevention and evidence-based medicine.[24] The panel of experts includes: internists, pediatricians, family physicians, gynecologists, obstetricians, nurses, and health behavior specialists.[25] With regard to the new legislation, this panel is tasked with rating

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[18] The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 1001, 124 Stat. 119, 131-32 (2010).

[19] 45 C.F.R. § 147.130.

[20] *Id.* § 147.130(b).

[21] *Id.* § 147.130(a).

[22] *See* The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 1001.

[23] U.S. Preventive Services Task Force, http://www.uspreventiveservices taskforce.org/ (last visited Feb. 21, 2011).

[24] *Id.*

[25] *Id.*

preventive services based on the strength of scientific evidence documenting their benefits.[26] Those services that are graded as 'A' or 'B' are designated as sufficiently evidence-based, and are thus covered under the new regulations.[27] Adult preventive services that have been characterized as evidence-based thus far include, but are not limited to: blood pressure screenings, cholesterol screenings, colon and breast cancer screenings, screenings for vitamin deficiencies during pregnancy, screenings for diabetes, low-dose aspirin counseling, tobacco cessation counseling, and obesity screening and counseling.[28]

Likewise, "[i]mmunizations for routine use in children, adolescents, and adults that have in effect a recommendation from the Advisory Committee on Immunization Practices of the [CDC]" will be covered by the new legislation.[29] To be considered 'in effect,' a recommendation from the Advisory Committee must be adopted by the Director of the CDC.[30] Such recommendations are considered to be for routine use if they appear on the Immunization Schedules of the CDC.[31] Hepatitis, influenza, tetanus, and meningococcal vaccines are several immunizations that are covered under the new rules, and are available to both children and adults.[32]

Covered preventive services for infants, children, and adolescents will be based on those services provided for in the comprehensive guidelines supported by the Health Resources and Services Administration ("HRSA").[33] Similarly, the HRSA supports guidelines that will provide for covered services for women, but these guidelines are not intended to conflict with any recommendations set forth by the USPSTF.[34]

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[26] *Act's New Rules*, *supra* note 3.

[27] *Id.*; DAY PITNEY LLP ALERT, NEW GUIDANCE REGARDING PPACA PREVENTIVE HEALTH CARE REQUIREMENTS (2010), *available at* http://www.daypitney.com/news/docs/dp_3262.pdf [hereinafter Day Pitney].

[28] *Preventive Services Covered under the Affordable Care Act*, HEALTHCARE.GOV, Feb. 21, 2011, http://www.healthcare.gov/law/about/provisions/services/lists.html [hereinafter *Preventive Services Covered*]; *See also Act's New Rules*, *supra* note 3.

[29] 45 C.F.R. § 147.130(a)(1)(ii).

[30] *Id.*

[31] *Id.*

[32] *Preventive Services Covered*, *supra* note 28.

[33] 45 C.F.R. § 147.130(a)(1)(iii).

[34] *Id* § 147.130(a)(1)(iv).

III. Exceptions to the Rule

Although the regulations relating to preventive care became effective on September 23, 2010, certain exceptions may prevent insured individuals from reaping all the benefits of the legislation. For example, health plans using a network of providers are only required to provide these cost-free preventive services through their in-network providers.[35] Furthermore, if a patient's preventive service is billed separately from the office visit in which the service is performed, the insurer is not precluded from imposing cost-sharing requirements with respect to the office visit.[36] If the preventive service and office visit are billed together, but the primary purpose of the office visit is not the delivery of the preventive service, then, again, the insurer may impose cost-sharing requirements with respect to the office visit.[37]

Likewise, some plans will be considered "grandfathered," and will not be immediately subject to the new coverage requirements. Group health plans in existence on the date of the reform bill's enactment, March 23, 2010, will be designated as "grandfathered plans," and will not be required to comply with the new preventive service regulations.[38] If these plans engage in certain changes in design or cost, however, they may forfeit their grandfathered status.[39] For example, plans will forfeit their status if they: 1) eliminate all or substantially all of the benefits to diagnose or treat a particular condition; 2) increase co-insurance percentages beyond March 23, 2010 levels; or 3) significantly raise

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[35] *Id.* § 147.130(a)(3); *Preventive Care and Services*, HEALTHCARE.GOV, September 23, 2010, http://www.healthcare.gov/law/provisions/preventive/index.html [hereinafter *Preventive Care and Services*].

[36] *Preventive Care and Services*, *supra* note 35; 45 C.F.R. § 147.130(a)(2)(i).

[37] *Id.*; *See also* 45 C.F.R. § 147.130(a)(2)(iii).

[38] *Fact Sheet: Keeping the Health Plan You Have: The Affordable Care Act and "Grandfathered" Health Plans*, HEALTHREFORM.GOV, http://www.healthreform.gov/newsroom/keeping_the_health_plan_you_have.html (last visited Apr. 11, 2011) [hereinafter *Fact Sheet*]; BUCK CONSULTANTS, PREVENTIVE CARE GUIDANCE FOR NON-GRANDFATHERED HEALTH PLANS RELEASED (2010), *available at* http://www.buckconsultants.com/buckconsultants/portals/0/documents/PUBLICATIONS/Newsletters/FYI/2010/FYI-07-20-10-Preventive-Care-Guidance-for-Non-Grandfathered-Health-Plans-Released.pdf.

[39] Kathy A. Lawler, *Is Your Group Health Plan Grandfathered?*, DAYPITNEY.COM, June 23, 2010, *available at* http://www.daypitney.com/news/newsDetail.aspx?pkID=3213.

copayments or deductibles.[40] Also, "[a] change in the carrier for an insured plan automatically results in the loss of grandfathered status - subject to the special grandfathering rule for collectively bargained plans."[41] "Non-grandfathered plans will need to be in compliance with the preventive care rules as of the first day of the first plan year beginning on or after September 23, 2010."[42] "Grandfathered plans that later lose that status will need to comply on the first day of the plan year in which they are no longer considered grandfathered."[43]

IV. Prevention and Improving Health

There is no question that preventive services can yield health benefits when used effectively. Widespread usage of various vaccinations has been responsible for virtually eradicating many diseases. Furthermore, early detection of conditions like high blood pressure and high cholesterol - both of which are covered under the new legislation in some capacity - can improve one's chances of containing the disease, and, ultimately, avoiding deadly heart attacks and strokes. Likewise, routine cancer screenings can increase the chances of early detection and improve one's chances of beating the disease and carrying on a normal life.

The PPACA thus aims to put such preventive measures in place in order to improve the general health of the American population. As stated, the covered services are based largely on the recommendations of various groups. Given the myriad of health-related issues in America today, it is not surprising that many of the preventive services already authorized for coverage have been targeted. One of the major healthcare cost drivers in the United States is the rise of obesity and obesity-related illnesses.[44] Indeed, obesity significantly increases the risk of cardiovascular disease, which is the number one cause of death for women – 36% of whom are obese, a higher percentage than men.[45] Further, nearly one-third of children are now overweight or obese.[46] Despite known consequences, many Americans also

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[40] *Id.*; *Fact Sheet*, *supra* note 38.
[41] Lawler, *supra* note 39.
[42] BUCK CONSULTANTS, *supra* note 38.
[43] *Id.*
[44] *Act's New Rules*, *supra* note 3.
[45] *New Rules and You*, *supra* note 13.
[46] *Id.*

continue to use tobacco-related products, increasing their risks for lung cancer and other tobacco-related illnesses.[47] Studies indicate that smoking cessation counseling, when delivered effectively, can save lives. One study suggested that more than 42,000 lives could be saved annually if doctors offered medications or counseling services to their smoking patients in order to help them quit.[48] It is estimated that tobacco use, poor diet and physical inactivity, and the misuse of alcohol may be responsible for as many as 900,000 American deaths annually.[49] It is virtually undisputed that if preventive services were successful in decreasing rates of obesity and tobacco use, the general health of the American population would improve.

Similarly, other studies have found that effective delivery of colorectal and breast cancer screenings, flu vaccines, counseling on smoking cessation, and regular aspirin use could avert 100,000 deaths each year.[50] One study indicated that if 90% of men over the age of forty and women over the age of fifty took a daily low-dose aspirin, up to 45,000 lives could be saved each year.[51] Some commentators suggest that effective cancer screenings could reduce the national cancer death rate by 29%.[52] Given these statistics, it is not surprising that blood pressure screenings, cholesterol screenings, colon and breast cancer screenings, low-dose aspirin counseling, tobacco cessation counseling, and obesity screening and counseling are covered under the new law.[53]

Other commentators suggest that there are negative implications of preventive care that must also be addressed. For instance, patients may garner psychological reassurance from screening tests that is not grounded in reality.[54] For example, patients could translate negative screening results into "I don't have cancer."[55] The National Cancer Institute ("NCI") notes that of all the options available for colorectal cancer screenings, none

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[47] *Id.*

[48] Melissa Jeffries, *How Preventative Care and Services Work*, DISCOVERY HEALTH, http://health.howstuffworks.com/wellness/preventive-care/preventative-care.htm (last visited Feb. 21, 2011).

[49] Cohen, *supra* note 2.

[50] *Act's New Rules*, *supra* note 3.

[51] Jeffries, *supra* note 48.

[52] *Act's New Rules*, *supra* note 3.

[53] *Id.*; *Preventive Services Covered*, *supra* note 28.

[54] Stubbs, *supra* note 1.

[55] *Id.*

are foolproof in their capacity for detection.[56] Even worse, negative screenings in certain instances may encourage patients to continue practicing bad habits. For example, a clear chest X-ray may give a smoker the false assurance that he is healthy, and thus, can keep smoking without consequence.[57] Also, the NCI notes that some screenings involve specific risks to patients.[58] Although it is uncommon, certain colorectal cancer screenings can result in complications such as bleeding or perforation of the lining of the colon.[59] The risks associated with various preventive services should not be ignored and should be disclosed to patients receiving the service. However, these potentially negative implications are arguably outweighed by the substantial benefits associated with preventive care. So long as the groups tasked with determining covered services are responsible in their recommendations, it is likely that preventive care administered in accordance with such recommendations will have an overall positive impact on public health.

In order for the legislation to effectively carry out the goal of improving health, the American public must increase its usage of preventive services. Thus, it follows that the PPACA's mandated coverage of preventive care aims to entice Americans to seek certain treatments they may have otherwise opted against. The most prominent mechanism for such enticement is likely the elimination of cost-sharing for covered preventive services. This theory is supported by one study indicating that once cost-sharing mechanisms were removed, the rate of women undergoing mammograms increased as much as 9%.[60]

While one might expect a no-cost benefit to increase consumption, healthcare generally does not operate in the same manner as other consumer markets. Rather, there are other factors to consider that may impact the success of the PPACA's efforts in creating a healthier population. First, many Americans have an aversion to going to the doctor. Preventive care by its very nature is elective, and therefore, not absolutely necessary.

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[56] National Cancer Institute, Colorectal Cancer Screening, http://www.cancer.gov/cancertopics/factsheet/Detection/colorectal-screening (last visited Apr. 11, 2011).

[57] Stubbs, *supra* note 1.

[58] National Cancer Institute, *supra* note 56.

[59] *Id.*

[60] *Act's New Rules*, *supra* note 3; *see also* Phil Galewitz, *Prevention may save lives, but not money,* MSNBC.COM, Aug. 4, 2009, http://www.msnbc.msn.com/id/32275652/.

Americans, as observed, tend to be more responsive in nature, and only go to the doctor when something is wrong. Even if the public is provided sufficient education concerning their new coverage options, there is no guarantee that individuals will partake in the no-cost services the PPACA offers. As it stands, Americans use preventive services at approximately half the recommended rate.[61] Millions of adults presently have insurance that does not cover recommended immunizations, indicating that the population cannot afford such coverage, or places a low emphasis on these preventive services.[62]

Second, the PPACA's aim to improve health can only be successful if Americans are sufficiently educated as to the preventive services available to them, in addition to the purported health benefits of such services. Congress seems to have recognized the need for education, as section 4004 of the PPACA reads, in part:

> The Secretary of Health and Human Services (referred to in this section as the "Secretary") shall provide for the planning and implementation of a national public-private partnership for a prevention and health promotion outreach and education campaign to raise public awareness of health improvement across the life span. Such campaign shall include the dissemination of information that: (1) describes the importance of utilizing preventive services to promote wellness, reduce health disparities, and mitigate chronic disease; (2) promotes the use of preventive services recommended by the United States Preventive Services Task Force and the Community Preventive Services Task Force; (3) encourages healthy behaviors linked to the prevention of chronic diseases; (4) explains the preventive services covered under health plans offered through a Gateway; [and] (5) describes additional preventive care supported by the Centers for Disease Control and Prevention, the Health Resources and Services Administration, the Substance Abuse and Mental Health Services Administration, the Advisory Committee on Immunization Practices, and other appropriate

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[61] *Act's New Rules*, *supra* note 3.
[62] *Id.*

agencies.[63]

While education efforts have been addressed, the implementation plans, and successes from these efforts, have yet to be seen. Thus, at least at this point, it is unclear whether these undertakings will be capable of sufficiently educating the public as to the benefits of preventive care. Furthermore, as stated previously, it is difficult to ascertain whether those who are educated will adopt widespread usage of preventive care.

In addition to the PPACA's education plan, physicians around the country will also be instrumental in informing patients of the benefits of preventive services and ensuring that eligible patients are engaging in necessary preventive care. If physicians are true to the Hippocratic Oath, they will take every opportunity to provide appropriate preventive care to their patients. Furthermore, with little doubt as to reimbursement and no concern over a patient's ability to pay his or her allocated portion, physicians will also have a financial incentive to increase the amount of preventive care they offer. Of course, physician behavior will also depend on each physician's personal knowledge of the PPACA, as well as the covered preventive services. There are simply no guarantees that the public will receive sufficient information from any source about newly-offered preventive benefits. Such education will play a vital role in the success or failure of the PPACA to create a healthier America.

Third, as noted, Americans are currently burdened with growing healthcare costs. It is not surprising that insured individuals have opted against preventive care because these services are not absolutely necessary. While the new legislation offers some cost relief to patients, the regulations admit that cost-sharing, in certain situations, will continue to take place.[64] Even with a solid understanding of its benefits, some patients may be dissuaded from partaking in preventive care out of fear that the service is not actually free. That is, depending on the reason given for the visit, and, ultimately, how the visit is billed, patients may indeed be required to pay traditional copayments, deductibles, or co-insurances.[65] This level of uncertainty may take some of the allure away from the preventive benefits offered by the PPACA,

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[63] Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 4004, 124 Stat. 119 (2010).

[64] 45 C.F.R. § 147.130 (2010).

[65] *Id.*

and curb widespread usage of preventive care benefits.

Finally, the new regulations address only those insured, and offer nothing to increase access to preventive care for the large percentage of the American population without healthcare coverage. Until the PPACA's ultimate objectives, which are directed toward covering all Americans, are fulfilled, it will be difficult to determine whether efforts aimed at creating a healthier America are successful on a national scale.

In general, mandatory coverage of certain preventive services and the elimination of cost-sharing for those services has the potential to improve the overall health of the American population. There is no denying that, when administered responsibly and effectively, such services can prove beneficial. However, with the PPACA in its infancy, there are many unknowns that may seriously impede the legislation's success. Specifically, the legislation depends on widespread adoption by the American public to accomplish its goals. By mandating coverage and eliminating cost-sharing, the law certainly has provided an incentive for adoption. However, as discussed above, healthcare does not necessarily operate in the same manner as other consumer markets. Lack of education, fear of hidden costs, and a general aversion to seeing a doctor may all contribute to peoples' failure to take advantage of the preventive services offered by the new law.

V. Prevention and Healthcare Costs

While there is little debate on the potential health benefits of preventive care, some commentators suggest that the purported cost-saving benefits of preventive care are grossly overstated. As noted above, the U.S. healthcare system has been subject to rising costs for many years, and politicians have often suggested preventive care as a vehicle for addressing this problem. Unfortunately, many studies suggest that, while preventive care may be cost-effective, it is rarely cost-saving.

The terms "cost-saving" and "cost-effective" are terms that are often mistakenly used interchangeably.[66] In reality, preventive care that serves to decrease costs is deemed to be cost-

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[66] SARA GOODELL ET AL., ROBERT WOOD JOHNSON FOUNDATION, COST SAVINGS AND COST-EFFECTIVENESS OF CLINICAL PREVENTIVE CARE (2009), *available at* http://www.rwjf.org/files/research/092209.policysynthesis.preventivecare.brief.pdf.

saving.[67] Particularly, treatment is deemed to reduce medical spending only when the costs of providing such treatment are lower than the costs that would be necessary if the treatment were not provided.[68] Alternatively, if the benefits offered by such care are sufficiently large relative to their associated costs, the preventive service is said to be cost-effective.[69] Prevention is not free, so while effective preventive measures save some of the costs of treating disease, they also incur new costs for their provision.[70] Thus, cost-effective treatments do not always decrease costs.

An analysis of cost-effectiveness compares interventions in terms of their impact on health benefits and costs.[71] A service's cost-effectiveness is often expressed as a ratio of its incremental costs to its incremental benefits.[72] Health benefits are frequently described in terms of the number of quality adjusted life years ("QALY").[73] QALYs take into account both the length and quality of life.[74] Typically, a low cost-effectiveness ratio represents a good value.[75] Higher ratios are indicative of services that are expensive, either because their costs are too large or because their benefits are too small.[76]

One study compared reviews conducted by the National Commission on Prevention Priorities ("NCPP"), the National Business Group on Health ("NBGH"), and Louis B. Russell.[77] The NCPP defines itself as "[a] nonpartisan organization of business, nonprofit and government leaders working to make evidence based disease prevention and health promotion a national priority."[78] The NBGH is "the nation's only non-profit organization devoted exclusively to representing large employers' perspective on national health policy issues and providing

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[67] *Id.*

[68] LOUISE B. RUSSELL, NATIONAL COALITION ON HEALTHCARE, PREVENTION'S POTENTIAL FOR SLOWING THE GROWTH OF MEDICAL SPENDING (2007), *available at* http://www.ihhcpar.rutgers.edu/downloads/RussellNCHC2007.pdf.

[69] GOODELL ET AL., *supra* note 66.

[70] RUSSELL, *supra* note 68, at 2.

[71] GOODELL ET AL., *supra* note 66.

[72] *Id.*

[73] GOODELL ET AL., *supra* note 66; Cohen, *supra* note 2.

[74] GOODELL ET AL., *supra* note 66.

[75] *Id.*

[76] *Id.*

[77] *Id.*

[78] Partnership for Prevention, Identifying the Most Beneficial and Cost Effective Preventative Services, http://www.prevent.org/Initiatives/National-Commission-on-Prevention-Priorities.aspx (last visited Feb. 21, 2011).

practical solutions to its members' most important health care problems."[79] Russell, meanwhile, is a research professor at the Institute for Health, Health Care Policy and Aging Research at Rutgers University.[80]

Individually, each of these studies considered several preventive services and their potential for being either cost-effective or cost-saving.[81] Surprisingly, only childhood immunizations and low-dose aspirin counseling for adults were found to be cost-saving by all three studies.[82] These two preventive services represent only a portion of the care covered by the new regulations. However, with at least some agreement on these particular services, it has been suggested that every dollar spent on immunizations could save $5.30 on direct health care costs, and $16.50 on total societal costs of disease.[83] Likewise, commentators note that physician advisement on low-dose aspirin use to all high-risk adults would result in a net medical cost savings of $70 per person.[84] There was some disagreement between the organizations with regard to other preventive services.[85] For instance, two of the studies found blood pressure screenings to be cost-effective, while the other found it to be cost-saving.[86] Moreover, both the NCPP and the NBGH found tobacco screening to be cost-saving. All three studies found colorectal and breast cancer screenings, both of which are included in the new regulations, to be solely cost-effective.[87]

The NCPP, despite finding many preventive services to be merely cost-effective, recently published a paper that analyzed the estimated cost of adopting a package of twenty proven preventive services against the potential savings that could be

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[79] National Business Group on Health, About the Business Group, http://www.businessgrouphealth.org/about/index.cfm (last visited Feb. 21, 2011).

[80] Institute for Health, Health Care Policy and Aging Research at Rutgers, About Us, http://www.ihhcpar.rutgers.edu/about_us/members.asp?v=2&i=39 (last visited Feb. 21, 2011).

[81] GOODELL ET AL., *supra* note 66.

[82] *Id.*

[83] *Id.*

[84] Dr. Charles, *10 cost effective preventive medicine services*, KEVINMD.COM, Jan. 25, 2010, http://www.kevinmd.com/blog/2010/01/10-cost-effective-preventive-medicine-services.html.

[85] GOODELL ET AL., *supra* note 66.

[86] *Id.*

[87] *Id.*

generated.[88] The study ultimately concluded that adoption of such preventive care could result in nearly $4 billion in savings annually.[89] However, the majority of the purported savings were attributed to tobacco cessation counseling, low-dose aspirin counseling, and alcohol screening and counseling – all of which were determined by the NCPP to be cost-saving as opposed to cost-effective.[90] Furthermore, the NCPP conducted the study under the assumption that 90% of the population engaged in preventive care.[91] While this Article suggests that the new regulations may result in some cost savings, it does not claim that all preventive services, when taken individually, have the potential to decrease healthcare costs.[92]

Other studies and commentators also indicate that the cost-saving benefits of preventive care are overstated. One study looked specifically at relevant cost-effectiveness literature contained in the Tufts New England Medical Center Cost-Effectiveness Analysis Registry.[93] The Registry consists of detailed information on published cost-effectiveness studies through 2005.[94] Again, the results of this study indicated that, while some preventive services yield cost savings, the vast majority do not.[95] Notably, the study also found that cost-effectiveness ratios for preventive services were remarkably similar to cost-effectiveness ratios for treatment.[96] These results allowed for the conclusion that opportunities for efficient investment in healthcare programs are roughly equal for both prevention and treatment.[97]

The fact remains that while preventive care offers certain benefits, the care itself is not free.[98] However, the benefits of cost-saving preventive services can be maximized by targeting specific

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[88] Business Wire, *Study: Preventive services can save lives, billions of dollars, at little or no cost,* HEALTHPARTNERS, Sept. 7, 2010, *available at* http://www.businesswire.com/news/home/20100907006418/en/Study-Preventive-services-saves-lives-billions-dollars.

[89] *Id.*

[90] *Id.*

[91] *Id.*

[92] *Id.*

[93] Cohen, *supra* note 2.

[94] *Id.*

[95] *Id.*

[96] *Id.*

[97] *Id.*

[98] Kelly Montgomery, *Does Preventive Care Save Money?*, ABOUT.COM, Jan. 30, 2009, http://healthinsurance.about.com/od/faqs/f/prevention.htm.

groups of individuals for preventive care. Likewise, the cost-effectiveness of any given service is dependent on the group to whom the service is offered as well as the frequency at which the service is offered. For instance, fecal occult tests for colon cancer are more cost-effective when offered every two years, as opposed to annually.[99] Similarly, screening seventy-five-year-old individuals with hypertension for diabetes is more cost-effective than extending the same benefit to all thirty-five-year-olds with or without hypertension.[100] Obviously, offering preventive care, such as cancer screenings, at the same frequency to all age groups, regardless of whether they are at-risk, would likely yield the greatest general health benefits. This approach, however, from both a practical and financial standpoint, is unrealistic. The new law has taken these factors into consideration and has limited certain benefits to specific groups of individuals.[101] For instance, colorectal cancer screenings are only covered for adults over the age of fifty.[102] Similarly, low-dose aspirin counseling is only available for men and women of certain ages.[103] Tobacco and obesity screenings are available to all adults, but tobacco cessation interventions are only available to tobacco users.[104] Regardless of whether a particular service is cost-saving or cost-effective, the regulations seem to be moving in the right direction to maximize the cost benefits of covered preventive care.[105]

From a purely reimbursement perspective, the elimination of cost-sharing for preventive services will undoubtedly result in new financial burdens for insurers. Specifically, insurers that already covered preventive services will no longer be able to shift costs to patient beneficiaries in the form of copayments or deductibles. Moreover, the new regulations will likely have an even greater impact on those insurers who, in the past, chose not to cover certain preventive services. That is, the new regulations will require them to cover evidence-based preventive services, which will certainly result in new costs related to reimbursement. However, the theory is that, in the long-run, increased emphasis on preventive care will both decrease healthcare costs and improve the general health of the American public. In other

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[99] GOODELL ET AL., *supra* note 66.
[100] *Id.*
[101] *Preventive Services Covered*, *supra* note 28.
[102] *Id.*
[103] *Id.*
[104] *Id.*
[105] *Id.*

words, prevention will help transform the healthcare system from one that treats the sick to one that focuses on keeping its citizens healthy.[106] Although insurers will likely have additional costs on the front-end, if preventive care is successful in decreasing the current burden imposed by chronic disease, these same insurers may save money in the future. After all, healthy citizens likely will not require the same treatments and procedures as their unhealthy counterparts. That said, the long-term benefits to insurers, and the healthcare system itself, are contingent upon preventive care actually improving health and curbing some of the costs associated with chronic disease.

If preventive care is successful in improving the health and life-expectancy of Americans, there are additional cost concerns that come with increased longevity.[107] Any cost savings associated with preventive care on the front-end may be offset by new costs associated with people living for a longer period of time. Thus, the healthcare system as a whole may not experience true cost savings in the long-run. While these implications are difficult to quantify, they should not be dismissed in cost control discussions involving preventive care.

It is unlikely that preventive care will prove to be the cost-saving mechanism many have purported it to be. In reality, "[m]ost preventive interventions add more to medical costs than they save, at the same time that they improve health."[108] While studies have indicated that certain preventive care is cost-saving, these same studies have concluded that the vast majority of preventive services are merely cost-effective and will not assist in curbing the country's rising healthcare costs.[109] Moreover, those cost-saving services will only be effective in lowering healthcare costs if they are widely utilized, as exemplified by the aforementioned NCPP study which found that $4 billion could potentially be saved per year, contingent on 90% adoption by the U.S. population.[110] Also, though preventive care may result in some cost savings, there is no guarantee that overall healthcare expenditures will decrease. That is, the savings associated with prevention may not be enough to reverse healthcare cost trends.[111] Even if preventive care costs are isolated, the data suggests that

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[106] *Act's New Rules*, *supra* note 3.
[107] GOODELL ET AL., *supra* note 66.
[108] RUSSELL, *supra* note 68, at 8.
[109] GOODELL ET AL., *supra* note 66.
[110] HEALTHPARTNERS, *supra* note 88.
[111] GOODELL ET AL., *supra* note 66.

increased usage of preventive care may actually cause healthcare costs to increase. The administration of preventive care is not free, and unless the money saved by offering cost-saving treatments is greater than the money expended for cost-effective treatments, it is likely that widespread usage of all covered preventive services may actually cause healthcare costs to rise. Thus, it is improper to view the preventive legislation as a panacea to America's current healthcare cost crisis.

VI. Conclusion

In sum, there are undoubtedly benefits to preventive care, but these benefits are mostly limited to the general betterment of the nation's health. And despite the fact that there are clear benefits available, this offers no guarantee that the PPACA's preventive legislation will create a healthier population. Much of the success of the new law depends on Americans' adoption of preventive care, and such adoption hinges on a variety of factors, most notably education. Even if education efforts are successful in producing widespread understanding of both the benefits of preventive care and the specific preventive services offered by the legislation, there is no guarantee that Americans will partake in care that is, by definition, not necessary. Whether it is a general aversion to doctor visits or a fear of hidden costs, individuals may not take advantage of the new benefits offered to them. While prevention can undoubtedly offer health benefits, any assertion that the PPACA's preventive care provisions will create a healthier America is mere speculation at this point in time - only time will reveal the true impact of the law.

Prevention does, in some cases, offer opportunities for cost savings, but the majority of covered services under the PPACA have been qualified as cost-effective. Broad generalizations concerning the cost-saving and health-improvement aspects of preventive care are likely founded in assumption, rather than empirical data. If preventive care were free, there would be no question as to its ability to reduce costs, but this is obviously not the case. Preventive care is not free, and those services designated as cost-effective are not working to reduce healthcare costs. While studies have shown that some services are cost-saving, the country's healthcare system, as a whole, will only experience a reduction in costs from preventive care if the dollars saved from those cost-saving services exceed the dollars spent on cost-effective services. Given the fact that the vast majority of covered

preventive services are only cost-effective, it is quite likely that prevention will ultimately not solve the problem of soaring healthcare costs.

The study of preventive care is complicated and requires the consideration of multiple factors. Prevention can be a powerful and useful tool, but careful, evidence-based analysis is required to reap maximum benefits.[112] Ideally, with the new regulations in place, more Americans will take advantage of preventive care, and the impact of these services will become more apparent in coming years. For now, though, it seems that "prevention is not the Holy Grail of healthcare reform."[113]

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[112] Stubbs, *supra* note 1.
[113] *Id.*