

# United States Senate

WASHINGTON, DC 20510

February 25, 2016

The Honorable Jacob J. Lew  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

The Honorable John Koskinen  
Commissioner of the Internal Revenue Service  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Dear Secretary Lew and Commissioner Koskinen:

We are writing to you regarding an issue essential to improving access to high value services for millions of Americans with chronic conditions. Helping Americans better manage these conditions and prevent further complications is increasingly recognized as vital to our nation's health and economic well-being. Chronic conditions are estimated to account for nearly \$.86 for every dollar spent on health care, and unmanaged chronic conditions negatively impact quality of life and decrease workplace productivity.

To enable better care for Americans with chronic conditions, we urge modernization of the "preventive care safe harbor" used in conjunction with high deductible health plans that are eligible to be paired with Health Savings Accounts (HSA-HDHPs). While we are considering legislation to address this issue, we believe the Treasury Department has the legal authority to update the definition of prevention for purposes of the safe harbor.<sup>1</sup> We urge you to update and improve the definition of the "preventive care safe harbor" to ensure that Americans have full access to adequate preventive care and chronic care management services.

HSA-HDHPs are restricted from covering services prior to a minimum deductible being met, unless those services fall within a "preventive care safe harbor." Current Treasury guidance narrowly defines prevention to include only primary preventive services, for example screening for diabetes, heart disease, or cancer, and specifically states "preventive care generally does not include any service or benefit intended to treat an existing illness, injury, or condition". (See IRS Notices 2004-23 and 2004-50.)

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<sup>1</sup> In a relevant part, the Internal Revenue Code refers to "preventive care (within the meaning of section 1871 of the Social Security Act, *except as otherwise provided by the Secretary*)." The phrase "except as otherwise provided by the Secretary" is an explicit delegation of authority to Treasury and the IRS, acting on the Secretary's behalf, to define the scope of "preventive care" for purposes of Code section 223 (which defines high deductible health plans).

We are concerned this narrow view of prevention makes it hard for millions of Americans with chronic conditions to access the care they need to most effectively manage their illness and prevent future complications. The definition is also at odds with that used by other federal agencies, including the Centers for Disease Control (CDC). The CDC makes clear that prevention “embraces strategies for appropriate management of existing diseases and related complications.” We suggest that you work closely with the Secretary of Health and Human Services and key stakeholder groups to ensure that high value preventive health care and chronic care management services are included in the “preventive care safe harbor” for high deductible health plans.

Modernizing the preventive care safe harbor to ensure Americans have full access to preventive health care services and to improve access to high value services to manage chronic conditions is increasingly vital. HSA-HDHPs are a growing source of both employer and individual coverage. A recent report by Families USA found that 42.8% of adults in the individual marketplace had chosen a plan with an individual deductible of at least \$1,500. Though that report did not focus exclusively on HSA-eligible HDHPs, the use of HSAs themselves increased by 29% between 2013 and 2014, with nearly 14 million HSAs in place by the end of 2014. These percentages will only continue to increase with time. According to the benefits consulting firm Towers Watson, the percentage of employers offering HSA-HDHPs on a full-replacement basis is projected to more than double to 50% by 2018. This trend underscores the importance of modernizing the safe harbor to ensure adequate coverage of preventive health care services and coverage of preventive, chronic care management services used to prevent complications associated with chronic conditions.

We ask that you carefully consider refining the scope of the safe harbor to ensure full coverage of preventive health care services, including services necessary to manage chronic conditions. At a time when our nation is transforming the way care is delivered, paid for, and accessed with a deliberate transition from volume to value, and a focus on improving management of chronic conditions, it is vital that public policy not work at cross-purposes. While this issue could be addressed legislatively, we urge you to use your clear authority to refine the safe harbor’s definition of preventive care and ensure full coverage of preventive health care services, including health care services to manage chronic conditions for millions of Americans.

Sincerely,



JOHN THUNE  
United States Senator



THOMAS R. CARPER  
United States Senator