



AMERICAN COUNSELING ASSOCIATION

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## The Affordable Care Act: What counselors should know

The Patient Protection and Affordable Care Act was signed into law on March 23, 2010, following several decades of work by Presidents and members of Congress of both political parties to establish a health care system providing coverage for all Americans. The Affordable Care Act (as the law is commonly referred to) continues our nation's reliance on both the private and public health care systems. The Affordable Care Act (ACA) is designed to establish consistent rules and consumer protections for the private health insurance system; expand access to health insurance coverage; and reduce the rate of growth of health care spending. It is important that counselors have a basic understanding of the law and how it works, and how it affects their profession. This is especially important because the law is still in the early stages of being implemented.

### Provisions in Effect Now

The Act includes many provisions which should help licensed professional counselors in their day-to-day life as health care providers. The changes and protections applying to private health insurance plans vary depending on whether or not the plans are currently operating—aka “**grandfathered**” **health plans**—or are new plans being offered in the individual or group market. In order to allow people to keep the coverage they currently have, the Act makes fewer requirements of grandfathered health plans than on new ones.

Existing health plans can maintain “grandfathered” status as long as they do *not*:

- Eliminate all or substantially all benefits to diagnose or treat a particular condition;
- Increase cost-sharing significantly;
- Substantially decrease the employer's premium contribution;
- Impose or reduce annual or lifetime dollar limit on coverage.

The Act makes the following requirements, **now**, of all health plans, including grandfathered plans:

- Prohibition on lifetime coverage limits, including on mental health & substance use services;
- Prohibition on health plans rescinding coverage, except in cases of fraud or intentional misrepresentation;
- Reporting of medical loss ratios (the amount of money plans actually spend paying for services), and premium rebates to enrollees if plans don't meet minimum medical loss ratio requirements;
- Extend coverage for dependent children up to age 26;
- Develop uniform explanation of coverage documents.

The Act creates a much broader array of safeguards for **new health plans**. In addition to the requirements already listed for grandfathered health plans, new health plans must:

- Restrict their use of annual coverage limits;
- Implement an effective appeals process for coverage determinations and claims, including notice to enrollees of available internal and external appeals processes, and allowing enrollees to review their files;
- Cover preexisting conditions for children under age 19.

Importantly, non-grandfathered health plans must cover certain **preventive health services without patient cost-sharing**. The current list of preventive health services which plans must cover is listed at <http://www.healthcare.gov/news/factsheets/2010/07/preventive-services-list.html>, and includes, among many other services:

**For all adults:** depression screening, alcohol misuse screening and counseling, obesity screening and counseling, HIV screening, STI prevention counseling, and tobacco use screening and cessation interventions.

**For women:** domestic and interpersonal violence screening and counseling, cervical cancer screening, and contraception.

**For children:** alcohol and drug use assessments for adolescents, depression screening for adolescents, immunizations, STI prevention counseling and screening for adolescents at higher risk, obesity screening and counseling, and behavioral assessments for children of all ages.

### Beginning 2014

Most of the big stuff in the Affordable Care Act happens in 2014. For health plan years beginning on or after January 1, 2014, health plans (which are *not* grandfathered health plans) will have to meet the following requirements:

- Plans cannot "discriminate with respect to participation under the plan or coverage against any health care provider who is acting within the scope of that provider's license or certification under applicable State law";
- **Plans must cover a package of essential health benefits, including "mental health and substance use disorder services, including behavioral health treatment";**
- Nondiscrimination in eligibility or coverage based on health status;
- Guaranteed issue and renewability of coverage;
- Coverage of preexisting conditions, for all ages;
- Abide by community rating rules, restricting plans' ability to require exorbitantly high premiums based on age, gender, or health status;
- Limit "waiting periods" for enrollee eligibility to no more than 90 days.

The prohibition against plans discriminating against providers on the basis of their type of license does **not** require plans to contract with any provider who wants to be on their panel; plans decide how many providers, of which type, they want. However, the provision should stop health plans from having a blanket policy of not covering counselors.

The requirement that plans cover mental health and substance use disorder services dovetails with the 2008 **Mental Health Parity and Addiction Equity Act** (MHPAEA). The Parity Act states that *if* plans cover mental health and addictive disorder services, they must do so under the same terms and conditions as apply to substantially all other general medical services covered. Thus, **the Affordable Care Act will extend MHPAEA protections to all new health plans.**

2014 is also the year that "Affordable Insurance Exchanges" begin operation. Exchanges will either be set up by your State, or will be run for your State by the federal government. Individuals and small businesses will be able to buy insurance from health plans participating in the Exchanges, in many cases using tax credits and subsidies. Having all these people pooled together, choosing among health plans offering the same package of services, will help keep premiums lower. Members of Congress will also get their coverage through the Exchanges. Although plans will be able to offer health insurance coverage outside of the Exchanges, they will still have to abide by the same patient protection requirements listed above, including the provider nondiscrimination provision, guaranteed issue and renewability, coverage of preexisting conditions, and community rating rules.

Although regulations implementing these and other provisions of the Act are still being finalized, state

insurance departments maintain their traditional authority over regulation of health insurers, and are given primary authority to enforce the Act's insurance market reforms. This is the same structure used for other federal laws, like MHPAEA.

## Medicaid

The primary way the Affordable Care Act increases access to health insurance is to expand eligibility for Medicaid. With the 2012 Supreme Court ruling upholding the Affordable Care Act, though, Medicaid expansion is an option for states, and not a requirement. Although the federal government will pick up almost all of the funding for expanding state Medicaid programs, many states are considering foregoing this funding and leaving thousands of their residents without coverage. Regardless, though, states remain responsible for designing their Medicaid programs--including determining which providers are covered under them. Counselors should know that Medicaid programs are notorious for low reimbursement rates.

## Integrated Care, Medicare, and Accountable Care Organizations

The Affordable Care Act includes a number of provisions to try to 'bend the cost curve' of health care spending, which in the U.S. has routinely grown much faster than the rate of inflation. The Act sets up grant programs under the Center for Medicare & Medicaid Innovation, within the U.S. Department of Health and Human Services, to foster the development of, and track the results of, integrated systems of care. Counselors in several parts of the country are participating in integrated systems of care, and ACA believes that behavioral health services are a necessary part of these systems. We encourage counselors to share with us their experiences in working with--or trying to work within--integrated systems of care, so that we are able to track developments in this next generation of healthcare delivery systems. To do this, contact Rebecca Daniel-Burke at [rburke@counseling.org](mailto:rburke@counseling.org).

The Affordable Care Act does not make significant changes to Medicare's benefit package. The Act does, however, set up a mechanism for testing out new Accountable Care Organizations (ACOs). In ACOs, integrated systems of care would be paid a fixed, capitated amount for providing all necessary services for Medicare beneficiaries, instead of providers being reimbursed on the usual fee-for-service basis. ACA is continuing to work to explicitly establish Medicare coverage of outpatient psychotherapy provided by LPCs. To find out how you can help in this effort--and we do need your help!--contact Scott Barstow at [sbarstow@counseling.org](mailto:sbarstow@counseling.org), or at 800-347-6647 x234.