

BILL THOMAS, CALIFORNIA,  
CHAIRMAN

PHILIP M. CRANE, ILLINOIS  
E. CLAY SHAW, JR., FLORIDA  
NANCY L. JOHNSON, CONNECTICUT  
AMO HOUGHTON, NEW YORK  
WALLY HERGER, CALIFORNIA  
TIM MCCRERY, LOUISIANA  
IVE CAMP, MICHIGAN  
M. RAMSTAD, MINNESOTA  
JIM NUSSLE, IOWA  
SAM JOHNSON, TEXAS  
JENNIFER DUNN, WASHINGTON  
MAC COLLINS, GEORGIA  
ROB PORTMAN, OHIO  
PHIL ENGLISH, PENNSYLVANIA  
J.D. HAYWORTH, ARIZONA  
JERRY WELLER, ILLINOIS  
KENNY C. HULSHOF, MISSOURI  
SCOTT MCINNIS, COLORADO  
RON LEWIS, KENTUCKY  
MARK FOLEY, FLORIDA  
KEVIN BRADY, TEXAS  
PAUL RYAN, WISCONSIN  
ERIC CANTOR, VIRGINIA

ALLISON H. GILES,  
CHIEF OF STAFF

# Congress of the United States

## U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS

1102 LONGWORTH HOUSE OFFICE BUILDING  
(202) 225-3625

Washington, DC 20515-6348

<http://waysandmeans.house.gov>

CHARLES B. RANGEL, NEW YORK,  
RANKING MINORITY MEMBER

FORTNEY PETE STARK, CALIFORNIA  
ROBERT T. MATSUI, CALIFORNIA  
SANDEAN M. LEVIN, MICHIGAN  
BENJAMIN L. CARDIN, MARYLAND  
JIM McDERMOTT, WASHINGTON  
GERALD D. KLECZKA, WISCONSIN  
JOHN LEWIS, GEORGIA  
RICHARD E. NEAL, MASSACHUSETTS  
MICHAEL R. McNULTY, NEW YORK  
WILLIAM J. JEFFERSON, LOUISIANA  
JOHN S. TANNER, TENNESSEE  
XAVIER BECERRA, CALIFORNIA  
LLOYD DOGGETT, TEXAS  
EARL POMEROY, NORTH DAKOTA  
MAX SANDLIN, TEXAS  
STEPHANIE TUBBS JONES, OHIO

JANICE MAYS,  
MINORITY CHIEF COUNSEL

June 3, 2004

The Honorable John W. Snow  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

Dear Secretary Snow:

As authors of the Health Savings Accounts (HSAs) provision, we are writing to clarify our intent regarding the definition of preventive care for high deductible health plans associated with HSAs. Section 223(c)(2) of the Internal Revenue Code, as added by the Medicare Modernization Act of 2003 (P.L. 108-173), provides that a plan may be treated as a high deductible health plan if it does not have a deductible for preventive care. Our intent was to define a broad range of items and services, including some drugs and biologics, as preventive care.

Treasury Notice 2004-23 states that a high deductible health plan may provide preventive care benefits without a deductible or with a deductible below the minimum annual deductible. The notice includes a safe harbor definition for preventive care and requests recommendations concerning any benefit or service that should be added to those set forth in the notice. The notice states that preventive care includes, for example, routine physicals, immunizations, tobacco cessation programs, and screenings for cancer or mental health conditions and substance abuse.

The U.S. Preventive Services Task Force (USPSTF) was established in 1984 to provide a strong scientific basis for selecting appropriate clinical preventive services for federal and commercial health plans. This Federally-convened panel of independent experts in prevention and primary care is widely recognized as the foremost source of guidance for preventive care. The USPSTF reviews the evidence for and against preventive services and publishes recommendations based on this review. Many health plans and professional societies base their policies on the USPSTF recommendations. Congress relies on the USPSTF for assistance in identifying appropriate preventive services for coverage under Medicare.

In its 1996 *Guide to Clinical Preventive Services*, Second Edition, the USPSTF categorizes preventive care into three levels:

1. Primary preventive measures are those provided to individuals to prevent the onset of a targeted condition. Examples include routine immunizations of healthy children and adults, **counseling, and some chemoprevention.**

2. Secondary preventive measures identify and treat asymptomatic persons who have already developed risk factors or preclinical disease but in whom the condition has not become clinically apparent. Examples include screening for high blood pressure or a screening Pap smear. Most screening tests fall into this category.
3. Tertiary preventive measures are part of the treatment and management of persons with clinical illnesses, such as cholesterol reduction in patients with coronary heart disease or insulin therapy to prevent the complications of diabetes mellitus.

The list of preventive services in the Treasury notice includes the immunizations, counseling and screening services identified as primary and secondary preventive measures by the USPSTF. We concur with the Treasury notice to exclude medical services that treat or manage clinical illness, which are identified as tertiary prevention by the USPSTF.

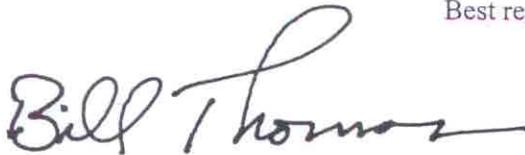
Nevertheless, we believe that chemoprevention, defined as medications proved to prevent or delay the onset of disease, should be added to the Treasury list of preventive services. These drugs and biologics are prescribed to asymptomatic persons to reduce the risk of developing a disease. Examples of chemoprevention in asymptomatic persons include use of the prescription drug Fosamax to prevent the development of osteoporosis, and use of tamoxifen or raloxifen for women at high risk of breast cancer.

Our intent in drafting the safe harbor provision in the Medicare Modernization Act was to include primary and secondary prevention as preventive care given safe harbor from the high deductible. Drugs and biologics used in primary and secondary prevention were also intended to fall under the safe harbor.

We look forward to working with you on an appropriate definition of preventive care for use with high deductible health plans associated with Health Savings Accounts. The inclusion of chemoprevention in the safe harbor will ensure that an overly restrictive definition of prevention care does not discourage employers, insurers and individuals from access to HSAs.

Your prompt response to this request is appreciated.

Best regards,



Bill Thomas  
Chairman



Nancy L. Johnson  
Chairman  
Subcommittee on Health

WMT/ms

cc: Shoshanna Tanner, Office of Division Counsel, IRS