



*United States Senate  
Committee on Homeland Security and Governmental Affairs*

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Staff Report Prepared for Ranking Member Tom Carper

**KICKING THE HABIT:**

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**HOW THE AFFORDABLE CARE  
ACT HELPS DELAWAREANS QUIT  
SMOKING**

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# I. EXECUTIVE SUMMARY

Each year, smoking-related illnesses cost the United States over \$300 billion and cause approximately 500,000 deaths nationwide. In Delaware alone, the annual health care costs caused directly by smoking exceed \$530 million and 1,400 adults die each year from smoking. Approximately 20 percent of adults in Delaware still identify as smokers.

With the passage of the Patient Protection and Affordable Care Act of 2010, millions of Americans have received help finding high-quality health insurance. Reforms enacted by the Affordable Care Act require certain health insurance plans to provide more preventive health services, including services to quit smoking, without any out-of-pocket costs. These services have the ability to improve health outcomes and lower healthcare costs. This requirement has helped approximately 76 million Americans with private health insurance gain access to preventive services, including 225,000 residents in Delaware. However, multiple studies, including one from the American Lung Association, have shown that the availability of tobacco cessation coverage varies among states.

At the request of Ranking Member Tom Carper, minority staff of the Senate Committee on Homeland Security and Governmental Affairs initiated an inquiry to determine whether major health insurers in Delaware were covering tobacco cessation services consistent with the requirements of the Affordable Care Act. In the course of the inquiry, minority staff received responses from Aetna, Highmark BlueCross BlueShield, Cigna-Health Spring, and United HealthCare Community Plan of Delaware. Minority staff also conducted an extensive review of health insurance policy documents and consulted with Delaware's Department of Insurance and private and public sector experts.

The inquiry found that health insurers offering qualified health plans on Delaware's health insurance marketplace are providing coverage for tobacco cessation services consistent with the requirements of the Affordable Care Act. Although Medicare and Medicaid plans are subject to different requirements for tobacco cessation services, counseling services and most cessation medications are still available at little or no cost to Medicare and Medicaid enrollees. While tobacco cessation coverage is available to Delawareans, the inquiry also found that the plan information from health insurance companies was not always up-to-date or publicly accessible.

Delawareans are receiving coverage for preventive services, including services to help quit smoking, in part because of the Affordable Care Act. Delawareans who smoke should contact their doctors to take advantage of this coverage to help kick the habit. In addition, minority staff recommends the following:

## ***Issue Clear Guidance on Tobacco Cessation Coverage***

- Without clear guidance from the Departments of Health and Human Services, Labor, and Treasury, coverage requirements are open to interpretation by health insurers.

- Updated guidance from the Departments of Health and Human Services, Labor, and Treasury will give clear direction that health insurers in every state must cover all forms of counseling and all seven tobacco cessation medications approved by the Food and Drug Administration without cost-sharing or prior authorization. These agencies should move forward with revised guidance as soon as possible.

***Ensure Plan Information is Accurate and Easily Accessible to all Consumers Seeking Plan Information***

- It is important for consumers to have easy access to their plan information so that they can take full advantage of the benefits available to them.
- Health insurance companies in Delaware and across the U.S. should continue working to inform their enrollees of the benefits available to them, including tobacco cessation services.

## II. BACKGROUND

Each year, smoking-related illnesses cost our country over \$300 billion and are responsible for approximately 500,000 deaths.<sup>1</sup> The annual health care costs in Delaware caused directly by smoking exceed \$530 million.<sup>2</sup> In Delaware, 1,400 adults die each year from smoking.<sup>3</sup> Despite these statistics, approximately 20 percent of adults in Delaware still identify as smokers.<sup>4</sup>

Tobacco cessation programs are crucial as they educate our citizens about the dangers of tobacco use and give them access to counseling and treatment. Some studies have estimated that increasing the use of preventive services, including tobacco cessation screening, could reduce net annual health care spending in the United States by several billion dollars.<sup>5</sup>

### ***Preventive Health Services***

With the passage of the Affordable Care Act (ACA), millions of Americans have received help finding high-quality health insurance. While many health insurers offered coverage for preventive health services before the ACA, this coverage was not always available and may have required additional out-of-pocket expenses or prior authorization.<sup>6</sup> Reforms enacted by the ACA require certain health insurance plans to provide more comprehensive coverage, including preventive health services without any cost-sharing requirements such as copayments, coinsurance, and deductibles.<sup>7</sup> This requirement has helped approximately 76 million Americans with private health insurance gain access to preventive services, including 225,000 residents in Delaware.<sup>8</sup>

*In Delaware, 1,400 adults die each year from smoking. Despite these statistics, approximately 20 percent of adults in Delaware still identify as smokers*

*The ACA has helped approximately 76 million Americans with private health insurance gain access to preventive services, including 225,000 residents in Delaware.*

Preventive healthcare services can strengthen the health care system in the United States by keeping people as healthy as possible. These services can also help prevent a range of illnesses and diseases, avoid the costs associated with treating those illnesses, and address the various health risks for men, women, and children.

### ***U.S. Preventive Services Task Force***

The U.S. Preventive Services Task Force (Task Force), an independent, volunteer panel of national experts in preventive and evidence-based medicine, makes evidence-based recommendations about clinical preventive services. The Task Force makes recommendations to the Centers for Medicare and Medicaid Services (CMS), which then sets requirements for which preventive services must be covered under the ACA.<sup>9</sup> The Task Force assigns a letter grade to each recommendation (A, B, C, D, or I).<sup>10</sup> Most individual and group health plans, including those offered on health insurance marketplaces, must cover, without cost-sharing requirements, “evidence-based items or services” that receive either an A or B rating.<sup>11</sup> Services that receive an A or B rating indicate high certainty that the benefits of the service are

substantial or moderate.<sup>12</sup> Included among the services with an A or B rating are blood pressure screenings, breast cancer screenings, cholesterol screenings, and tobacco cessation services.<sup>13</sup>

The Task Force recommends tobacco cessation services for non-pregnant adults and pregnant women as well as interventions for children that may become users.<sup>14</sup> The Task Force recommends that clinicians ask all adults whether they use tobacco; advise tobacco users to stop doing so; and offer additional counseling services or prescription medications to adult patients who would like help to stop smoking.<sup>15</sup> The Task Force also advises that clinicians should provide education or counseling to school-aged children and adolescents to prevent them from becoming tobacco users.<sup>16</sup>

### Examples of Preventive Services Recommended by USPSTF

Service	Description
Blood pressure screening	Screening for high blood pressure in adults 18 years or older.
Breast cancer screening	Mammography for women with or without clinical breast examination every 1 to 2 years for women age 40 years and older.
Cholesterol screening	Screening for men age 35 years and older, women 45 years and older
Tobacco use counseling	Ask all adults and pregnant women about use; advise them to stop using; provide behavioral interventions; FDA-approved medications for cessation to adult users
Tobacco use interventions	Interventions, including educations or brief counseling, to prevent initiation of tobacco use in school-aged children or adolescents

Source: US Preventive Services Task Force

The Food and Drug Administration (FDA) has approved three over-the-counter nicotine replacement products for persons 18 years of age and older (skin patches, chewing gum, and lozenges), two prescription-only nicotine replacement products (Nicotrol available both as a nasal spray and an inhaler), and two prescription-only medications that do not contain nicotine (Chantix and Zyban). Women who are pregnant should use these products only with approval from their health care professional.<sup>17</sup>

### Tobacco Cessation Medications Approved by the FDA

Over-the-Counter (Nicotine Replacements)	Prescription-Only (Nicotine Replacements)	Prescription-Only (No Nicotine Medications)
Skin patches	Nicotrol nasal spray	Chantix (Varenicline)
Chewing gum	Nicotrol inhaler	Zyban (Bupropion)
Lozenges		

Source: Food and Drug Administration

The American Lung Association (ALA) has studied the availability of tobacco cessation medications nationwide. These studies collected publicly available data, such as formularies, to determine whether a state was complying with the tobacco cessation requirements of the ACA.<sup>18</sup> In March 2015, the ALA initially found substantial variability by state and by company.<sup>19</sup> In their August 2015 update, they found an increase in the public availability of formularies and other coverage documents identifying tobacco cessation coverage.<sup>20</sup>

### ***Federal Guidance on Tobacco Cessation Service under the ACA***

The U.S. Departments of Labor, Health and Human Services, and Treasury have jointly prepared responses to frequently asked questions about tobacco cessation service coverage required under the ACA. Though more comprehensive guidance is needed, according to this guidance, the Departments will consider a group health plan or health insurance issuer to be in compliance with the requirement to cover tobacco use counseling and interventions if the plan or issuer covers without cost-sharing:

- Four tobacco cessation counseling sessions of at least 10 minutes each (including telephone counseling, group counseling and individual counseling) without prior authorization; and
- All FDA-approved tobacco cessation medications (including both prescription and over-the-counter medications) for a 90-day treatment regimen when prescribed by a health care provider without prior authorization.<sup>21</sup>

### ***Qualified Health Plans***

Qualified health plans are the plans available either on a state's health insurance marketplace website or the federal marketplace on Healthcare.gov. Under the ACA, qualified health plans are private insurance plans that receive certification by CMS and are available to individuals and families.<sup>22</sup> These plans provide essential health benefits and advanced premium tax credits to those eligible.<sup>23</sup> Essential health benefits are a set of ten categories of services such as emergency services, mental health services, prescription medications, and other preventive services, including tobacco cessation services.<sup>24</sup> Qualified health plans provide minimum essential coverage in satisfaction of the ACA's requirement for having health coverage.<sup>25</sup>

Availability of qualified health plans will vary based on whether a state uses a state-based marketplace or a federally-facilitated marketplace.<sup>26</sup> Delaware residents apply for and enroll in coverage through Healthcare.gov.<sup>27</sup>

### ***Medicare and Medicaid Plans***

The rules for Medicare and Medicaid plans, however, are different from the rules for qualified health plans available on Delaware's health insurance marketplace.

As compared to qualified health plans available to individuals and families, Medicare plans are generally required to cover the same preventive services that receive the highest ratings from the Task Force without cost-sharing.<sup>28</sup> One exception to this requirement is the coverage of nonprescription or over-the-counter drugs. Medicare Part D excludes coverage for these types of drugs.<sup>29</sup> As a result, Medicare plans are not required to offer coverage of all seven of the FDA-approved tobacco cessation medications.

The coverage requirements for tobacco cessation services in Medicaid plans vary depending on whether the individual is eligible for a traditional or expansion Medicaid plan. Medicaid was traditionally available to certain populations with very low income.<sup>30</sup> The ACA prohibits states from excluding coverage for tobacco cessation medications to individuals enrolled in a traditional Medicaid plan.<sup>31</sup> Incentives are also available to states that choose to cover other preventive services, such as tobacco cessation counseling, without cost-sharing.<sup>32</sup> Traditional Medicaid plans must also cover counseling and tobacco cessation medications for pregnant women without cost-sharing.<sup>33</sup>

The ACA now permits states to expand their Medicaid program to individuals with household incomes below 138% of the Federal Poverty Line.<sup>34</sup> Expansion Medicaid plans must offer the same essential health benefits as private health plans, including preventive services like tobacco cessation services without cost-sharing.<sup>35</sup>

## ***Plan Information***

In addition to requiring coverage of preventive health services, the ACA also requires health insurance issuers to provide certain plan information to consumers to help inform their plan choices. All health plans available on a state insurance marketplace or the federal marketplace must provide a Summary of Benefits and Coverage (Summary).<sup>36</sup> The U.S. Departments of Health and Human Services, Labor, and Treasury have jointly developed a template Summary to ensure uniformity across states and marketplaces.<sup>37</sup> This template requires health insurance issuers to insert examples of covered services, cost-sharing requirements, and an Internet web address where a copy of the actual individual coverage policy and prescription drug formulary can be reviewed and obtained.<sup>38</sup>

Health plans must publish up-to-date, accurate, and complete lists of all covered drugs on its formulary drug lists.<sup>39</sup> Formularies should also be available on a plan's public web site without requiring an individual to create or access an account.<sup>40</sup> The Center for Consumer Information & Insurance Oversight at CMS publishes the health insurance marketplace public use files. This includes a Plan Attributes file that compiles all of the data from all health insurance marketplaces, including Internet web addresses for prescription drug formularies.<sup>41</sup>



### III. RANKING MEMBER CARPER'S INQUIRY

At the request of Ranking Member Tom Carper, minority staff of the Senate Committee on Homeland Security and Governmental Affairs initiated an inquiry in March 2016 to determine whether major health insurers in Delaware were covering tobacco cessation services consistent with the requirements of the ACA.

The inquiry was limited to the individual and family plans available on Delaware's health insurance marketplace in 2016. In the course of the inquiry, minority staff received responses from Aetna, Highmark BlueCross BlueShield, Cigna-Health Spring, and United HealthCare Community Plan of Delaware.<sup>42</sup> Minority staff also conducted an extensive review of health insurance policy documents. The documents included Summaries of Benefits and Coverage, Schedules of Benefits, benefit booklets, drug formularies, and additional preventive drug lists of all individual/family plans available on Delaware's health insurance marketplace.

Minority staff also engaged with representatives from Delaware's Department of Insurance to further understand how the state reviews and approves plans before making them available on Delaware's health insurance marketplace. Additional discussions took place between representatives from the health insurers and the Committee's minority staff to further clarify the information in the written responses.

## IV. COVERAGE OF TOBACCO CESSATION SERVICES IN DELAWARE

The inquiry found that health insurers offering qualified health plans on Delaware's health insurance marketplace are providing tobacco cessation coverage consistent with the requirements of the ACA. Although Medicare and Medicaid plans are subject to different requirements for tobacco cessation services, counseling services and most of the cessation medications are still available at little or no cost to Medicare and Medicaid enrollees. However, while tobacco cessation coverage is available to Delawareans, the inquiry also found that the plan information from certain health insurance companies was not always up-to-date or publicly accessible.

### *Highmark BlueCross BlueShield Delaware*

*The inquiry found health insurers that offer qualified health plans on Delaware's health insurance marketplace are providing tobacco cessation coverage consistent with the requirements of the ACA.*

Highmark offered 20 qualified health plans on Delaware's health insurance marketplace in 2016.<sup>43</sup> 16 of these plans are Exclusive Provider Organization (EPO) plans and the other four are Preferred Provider Organization (PPO) plans.

The inquiry found that Highmark's qualified health plans cover tobacco cessation counseling services. This coverage includes individual, group, telephonic, and online counseling class visits as well as walk-in clinic visits. These services are available without any cost-sharing or prior authorization. Highmark also covers all seven FDA-approved tobacco cessation medications without cost-sharing or prior authorization. All 20 of these plans

use the same formulary, which lists all of the tobacco cessation medications.<sup>44</sup>

With respect to plan information, Highmark's Summaries of Benefits and Coverage for qualified health plans include Internet web addresses for more information regarding coverage. However, these web addresses do not permit an individual not enrolled in a Highmark plan to obtain or review a complete individual coverage policy that describes full coverage offered by the plan.<sup>45</sup> Upon request from minority staff, Highmark provided a sample copy of an individual coverage policy, but this document did not clearly indicate whether group counseling is available or whether there are any cost-sharing or prior authorization requirements for tobacco cessation services. Upon request from minority staff, Highmark confirmed that group counseling services are available with no cost-sharing or prior authorization requirements for tobacco cessation services in the qualified health plans offered on Delaware's health insurance marketplace.<sup>46</sup>

In addition, the corresponding formulary for Highmark's qualified health plans did not clearly indicate that the tobacco medications had no cost-sharing requirements and also listed a prior authorization requirement for Chantix. Upon request from minority staff, Highmark clarified that the formulary link was incorrect and provided the correct formulary link.<sup>47</sup> This formulary link clearly indicates no cost-sharing requirements or prior authorization for all seven tobacco cessation medications. At the time of this report, Highmark has provided the correct formulary link to CMS and CMS is in the process of updating its website.<sup>48</sup>

## **Aetna**

Aetna offered eight qualified health plans on Delaware's health insurance marketplace in 2016.<sup>49</sup> Four of these plans are Health Maintenance Organization (HMO) plans and the other four are PPO plans.

The inquiry found that Aetna's qualified health plans cover tobacco cessation counseling services. This coverage includes preventive counseling visits, individual treatment visits, and class visits as well as walk-in clinic visits. These services are available without any cost-sharing or prior authorization. Aetna also covers all seven FDA-approved tobacco cessation medications without cost-sharing or prior authorization. Both the prescription and over-the-counter medications are therefore available at no cost as long as the enrollee obtains a prescription. This coverage is available for the first two 90-day treatment regimens for tobacco cessation in a calendar year.<sup>50</sup>

With respect to plan information, Aetna's Summaries of Benefits and Coverage for qualified health plans include Internet web addresses where a copy of the complete individual coverage policy that describes full coverage offered by the plan and prescription drug formulary can be reviewed and obtained. Information regarding the cost-sharing of the counseling services and the medications is available in the individual benefit plan document and schedule of benefits given to each enrollee. However, Aetna's policy documents do not clearly indicate whether there are any prior authorization requirements for tobacco cessation services. Upon request of minority staff, Aetna confirmed that there are no prior authorization requirements for tobacco cessation services in qualified health plans.<sup>51</sup>

In addition, the corresponding formularies for Aetna's qualified health plans indicated some cost-sharing requirements for tobacco cessation medications. These formularies listed all of the tobacco cessation medications as "copay exceptions" except for the nicotine replacement chewing gum and lozenges.<sup>52</sup> Upon request of minority staff, Aetna confirmed that there were no cost-sharing requirements and updated its formularies to reflect the coverage listed in individual plan documents and schedules of benefits. CMS now lists the updated formulary on its website.<sup>53</sup>

## **Cigna-HealthSpring**

Cigna-HealthSpring provides Medicare Advantage, Part D, and Medicare supplemental offerings in Delaware. Although the ACA requires Medicare plans to cover the preventive services with the highest ratings from the Task Force without cost-sharing, Medicare plans do not cover all of the FDA-approved tobacco cessation medications.<sup>54</sup> Medicare Part D excludes coverage for nonprescription or over-the-counter drugs, including the nicotine patches, chewing gum, and lozenges.<sup>55</sup>

Cigna-HealthSpring covers individual tobacco cessation counseling services and medications for tobacco cessation. Enrollees are eligible for up to two attempts to stop using tobacco per year and four visits per attempt. Enrollees have access to a maximum of eight visits per year without cost sharing. Cigna formularies also cover four tobacco cessation medications: Buproban, Chantix, Nicotrol Inhaler, and Nicotrol Nasal Spray. Cigna covered all four of these medications prior to the ACA.<sup>56</sup>

## ***UnitedHealthcare Community Plan of Delaware***

United HealthCare Community Plan of Delaware offers Medicaid in the form of a Managed Care Organization. The coverage requirements for tobacco cessation services in Medicaid plans vary depending on whether the individual is eligible for a traditional or expansion Medicaid plan. Traditional Medicaid requires coverage of all tobacco cessation medications but coverage of counseling services and cost-sharing requirements will vary by state.<sup>57</sup> Counseling services and all seven tobacco cessation medications must be available without cost-sharing for pregnant women.<sup>58</sup> Expansion Medicaid programs require coverage of all tobacco cessation medications without cost-sharing.<sup>59</sup>

United HealthCare Community Plan of Delaware covers tobacco cessation counseling services. The policy document for Medicaid enrollees does not indicate any prior authorization requirements for counseling. Group counseling is also available in the form of classes to help enrollees stop smoking.<sup>60</sup> United HealthCare Community Plan also covers all seven FDA-approved tobacco cessation medications.<sup>61</sup>

## V. CONCLUSIONS AND RECOMMENDATIONS

Delawareans are receiving coverage for preventive services, including services to help quit smoking, in part because of the Affordable Care Act. Delawareans who smoke should contact their doctors to take advantage of this coverage to help kick the habit. While this coverage is encouraging, work remains to be done to ensure that comprehensive coverage is available in all states and is clearly communicated to consumers. Health insurers in Delaware and around the country should also continue to make plan information easily accessible to all individuals.

### ***HHS, Labor, and Treasury Should Issue Clear Guidance on Tobacco Cessation Coverage***

*Delawareans are receiving coverage for preventive services, including services to help quit smoking, in part because of the Affordable Care Act. Delawareans who smoke should contact their doctors to take advantage of this coverage to help kick the habit*

While the qualified health plans offered on Delaware's health insurance marketplace in 2016 are providing coverage for tobacco cessation services, multiple studies, including one from the American Lung Association, have shown that the availability of coverage for tobacco cessation services varies across states.<sup>62</sup> Senators from Washington state and Connecticut have also sought information from health insurers regarding coverage for tobacco cessation services in their states.<sup>63</sup> Without clear guidance from the Departments of Health and Human Services, Labor, and Treasury, coverage requirements are open to interpretation by health insurers.

On June 17, 2016, Ranking Member Carper, and 13 additional Senators sent a letter to the Departments asking them to update the previously issued Frequently Asked Questions from May 2014, which serves as current guidance for tobacco cessation services. Updated guidance from the Departments of Health and Human Services, Labor, and Treasury will give clear direction that health insurers in every state must cover all forms of counseling and all seven tobacco cessation medications approved by the Food and Drug Administration without cost-sharing or prior authorization.<sup>64</sup> These agencies should move forward with revised guidance as soon as possible.

### ***Insurers Should Ensure Plan Information is Accurate and Publicly Accessible***

If information regarding coverage is inaccurate or unavailable, individuals may not be able to make informed decisions about their health care. Many Delawareans and Americans enrolled in various types of health insurance plans may want assistance to help them stop smoking but may not realize that several forms of counseling services are available to them. Some people may believe that tobacco cessation medications may be helpful but prohibitively expensive. Others may simply be unaware that they can receive treatment for current health conditions. It is important for consumers to have easy access to their policy documents so that they can take full advantage of the benefits available to them.

Informing enrollees of the benefits that are available to them in their health insurance plans can help Delawareans and other Americans live healthier lives and reduce health care costs at all levels. Health insurance companies in Delaware and across the U.S. should continue working to inform their enrollees of the benefits available to them, including tobacco cessation services. State insurance departments and the Centers for Medicare and Medicaid Services should also continue to oversee the efforts of health insurers to provide plan information as required under the Affordable Care Act.

## VI. APPENDIX

1. OFFICE OF THE SURGEON GENERAL, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, THE HEALTH CONSEQUENCES OF SMOKING—50 YEARS OF PROGRESS: A REPORT OF THE SURGEON GENERAL, 11 (2014).
2. The Toll of Tobacco in Delaware, *The Toll of Tobacco in the United States*, Campaign for Tobacco-Free Kids (Updated Jun. 20, 2016), available at [https://www.tobaccofreekids.org/facts\\_issues/toll\\_us/delaware](https://www.tobaccofreekids.org/facts_issues/toll_us/delaware).
3. *Id.*
4. *Id.*
5. NATIONAL PREVENTION, HEALTH PROMOTION AND PUBLIC HEALTH COUNCIL, OFFICE OF THE SURGEON GENERAL, U.S. DEP'T OF HEALTH & HUMAN SERVICES, NATIONAL PREVENTION STRATEGY: AMERICA'S PLAN FOR BETTER HEALTH AND WELLNESS (Jun. 2011); Michael V. Maciosek, et. al., *Greater Use of Preventive Services in U.S. Health Care Could Save Lives at Little or No Cost*, Health Affairs (Sep. 2010).
6. *Affordable Care Act Rules on Expanding Access to Preventive Services for Women*, U.S. DEP'T OF HEALTH AND HUMAN SERVICES (Aug. 1, 2011), available at <http://www.hhs.gov/healthcare/facts-and-features/fact-sheets/aca-rules-on-expanding-access-to-preventive-services-for-women/>.
7. Patient Protection and Affordable Care Act of 2010 § 2713, 42 U.S.C. § 300gg-13 (2014); 26 C.F.R. § 54.9815-2713 (2015); 29 C.F.R. § 2590.715-2713 (2015); 45 C.F.R. § 147.130 (2015).
8. *5 Years Later: How the Affordable Care Act is Working for Delaware*, U.S. DEP'T OF HEALTH AND HUMAN SERVICES (Nov. 2015), available at <http://www.hhs.gov/healthcare/facts-and-features/state-by-state/how-aca-is-working-for-delaware/index.html>.
9. About the USPSTF, U.S. PREVENTIVE SERVICES TASK FORCE, <http://www.uspreventiveservicestaskforce.org/Page/Name/about-the-uspstf>.
10. *Id.*
11. *Supra* note 7.
12. Grade Definitions, U.S. PREVENTIVE SERVICES TASK FORCE (after July 2012), <https://www.uspreventiveservicestaskforce.org/Page/Name/grade-definitions>.
13. USPSTF A and B Recommendations, U.S. PREVENTIVE SERVICES TASK FORCE (last updated Jun. 2016), <http://www.uspreventiveservicestaskforce.org/Page/Name/uspstf-a-and-b-recommendations/>.
14. *Id.*
15. *Id.*
16. *Id.*
17. FDA 101: Smoking Cessation Products, FOOD AND DRUG ADMINISTRATION, U.S. DEP'T OF HEALTH AND HUMAN SERVICES (Mar. 2015).
18. *State Health Insurance Marketplace Plans: New Opportunities to Help Smokers Quit*, American Lung Association (Aug. 2015).
19. *Id.* See also *State Medicaid Program Coverage of Tobacco Dependence Treatments by Type of Coverage*, Kaiser Family Foundation (2014).
20. *Supra* note 18.
21. FAQs about Affordable Care Act Implementation, Part XIX, Q5, U.S. DEP'T OF LABOR, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, U.S. DEP'T OF TREASURY (May 2, 2014).
22. Patient Protection and Affordable Care Act of 2010 § 1301 (a), 42 U.S.C. § 18021 (2014); 45 C.F.R. § 156.200 (2015).
23. *Id.*
24. Patient Protection and Affordable Care Act of 2010 § 1302, 42 U.S.C. § 18022 (2014); 45 CFR § 156.110 (2015).
25. Patient Protection and Affordable Care Act of 2010 § 1501 (b) (2015), 26 U.S.C. § 5000A (2014); 26 C.F.R. § 1.5000A-2 (2015).

26. State Health Insurance Marketplace Types, 2016, Kaiser Family Foundation (2016).
27. *Id.*
28. Patient Protection and Affordable Care Act of 2010 §§ 4104–4105, 42 U.S.C. §§ 1395x (ddd), 1395l (2014).
29. Medicare Prescription Drug, Improvement, and Modernization Act of 2003 § 101 (e)(2)(A), 42 U.S.C. 1396r-8 (d)(2)(F) (2014); 42 C.F.R. § 423.100 (2015).
30. List of Medicaid Eligibility Groups, CENTER FOR MEDICARE AND MEDICAID SERVICES, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, available at <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/waivers/1115/downloads/list-of-eligibility-groups.pdf>.
31. Patient Protection and Affordable Care Act of 2010 § 2502, 42 U.S.C. § 1396r-8 (d)(7) (2014); 42 C.F.R. § 423.100 (2015).
32. Patient Protection and Affordable Care Act of 2010 § 4106 (b), 42 U.S.C. § 1396d (b) (2014); ALISON MITCHELL, CONG. RESEARCH SERV., R43847, MEDICAID'S FEDERAL MEDICAL ASSISTANCE PERCENTAGE (FMAP) 9 (2016).
33. Patient Protection and Affordable Care Act of 2010 § 4107 (a), 42 U.S.C. § 1396d (bb) (2014); Letter from Cindy Mann, Director, to State Medicaid Directors re: New Medicaid Tobacco Cessation Services, CENTERS FOR MEDICARE & MEDICAID SERVICES, U.S. DEP'T OF HEALTH AND HUMAN SERVICES (Jun. 24, 2011).
34. Patient Protection and Affordable Care Act of 2010 § 2001, 42 U.S.C. § 1396a (10)(A)(i)(VIII) (2014); 42 C.F.R. § 435.119 (2015); Medicaid Expansion under the Affordable Care Act of 2014 – Delaware Medicaid Program – Alternative Benefit Plan, 17 DE Reg. 841 (Feb. 1, 2014).
35. Patient Protection and Affordable Care Act of 2010 § 2001; 45 C.F.R. §§ 147.130, 156.115 (2015); Medicaid Expansion under the Affordable Care Act of 2014 – Delaware Medicaid Program – Alternative Benefit Plan, 17 DE Reg. 841 (Feb. 1, 2014).
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37. Additional information is available at: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/summary-of-benefits>; [https://www.cms.gov/ccio/Resources/Forms-Reports-and-Other-Resources/index.html#Summary of Benefits and Coverage and Uniform Glossary](https://www.cms.gov/ccio/Resources/Forms-Reports-and-Other-Resources/index.html#Summary%20of%20Benefits%20and%20Coverage%20and%20Uniform%20Glossary).
38. Patient Protection and Affordable Care Act of 2010 § 2715, 42 U.S.C. § 300gg-15 (2014); 45 C.F.R. § 147.200 (a)(2) (2015); 26 C.F.R. § 54.9815-2715 (2015); 29 C.F.R. § 2590.715-2715 (2015).
39. 45 C.F.R. § 156.122 (d) (2015).
40. *Id.*
41. The Plan Attributes PUF contains a spreadsheet that includes Internet web addresses for up-to-date formularies: <https://www.cms.gov/ccio/resources/data-resources/marketplace-puf.html>.
42. Senator Carper Seeks Information on Delaware Health Insurance Companies' Efforts to Provide Tobacco Cessation Services to Consumers (Apr. 14, 2016), <https://www.hsgac.senate.gov/media/minority-media/senator-carper-seeks-information-on-delaware-health-insurance-companies-efforts-to-provide-tobacco-cessation-services-to-consumers>.
43. The list of plans Highmark is offering in 2016 is viewable on Healthcare.gov without creating an account or enrolling in a plan. Visit Healthcare.gov, type "health plans" in the search box, click "preview health plans & prices based on income," enter a Delaware zip code, click "skip" for all other questions, and then click on "continue to plans" to view all of the plans current available for Delaware residents.
44. The formulary for Highmark's currently available qualified health plans for Delaware residents is available by visiting: <https://client.formularynavigator.com/Search.aspx?siteCode=7597050967>. The list of tobacco cessation medications can be found by clicking "diagnostic and misc agents" and then clicking "smoking deterrents."; see also Response Letter from President Timothy Constantine, Highmark BlueCross BlueShield Delaware, to Senator Thomas Carper (May 5, 2016) (on file with Committee).
45. The individual policy documents for Highmark's 20 qualified health plans are available upon request from an enrollee.
46. Email from Representative for Highmark to minority staff (Jul. 29, 2016, 10:51 EST) (on file with Committee).
47. *Id.*
48. *Supra* note 41.



49. The list of plans Aetna is offering in 2016 is viewable on Healthcare.gov without creating an account or enrolling in a plan. Visit Healthcare.gov, type "health plans" in the search box, click "preview health plans & prices based on income," enter a Delaware zip code, click "skip" for all other questions, and then click on "continue to plans" to view all of the plans current available for Delaware residents.
50. The individual policy documents for Aetna's eight qualified health plans are available at: <https://www.aetna.com/plan-info/individual/policies/2016/delaware.html>.
51. Phone call and emails with Senior Representative for Aetna to minority staff (Aug. 11, 2016, 15:06 EST, 18:04 EST) (on file with Committee).
52. The formulary for Aetna's current bronze level HMO and PPO plans for Delaware residents is available at: <http://client.formularynavigator.com/Search.aspx?siteCode=8432547284>. The formulary for Aetna's current silver and gold level HMO and PPO plans for Delaware residents is available at: <http://client.formularynavigator.com/Search.aspx?siteCode=8430124997>. The list of tobacco cessation medications can be found in each formulary by clicking "psychotherapeutic and neurological agents" and then clicking "smoking deterrents."; see also Response Letter from Executive VP Harold Paz, Aetna, to Senator Thomas Carper (May 13, 2016) (on file with Committee).
53. *Supra* note 41
54. *Supra* note 28.
55. *Supra* note 29.
56. Response Letter from President Herbert Fritch, Cigna-HealthSpring to Senator Thomas Carper (May 13, 2016) (on file with Committee). Cigna-HealthSpring's formularies are available at: <http://www.cigna.com/medicare/part-d/drug-list-formulary>.
57. *Supra* notes 31–32.
58. *Supra* note 33.
59. *Supra* note 35.
60. UnitedHealthcare Community Plan's member handbook for Medicaid enrollees is available at: <http://www.uhccommunityplan.com/content/dam/communityplan/plandocuments/handbook/en/DE-MedicaidHandbook-EN.pdf>.
61. Response Letter from CEO Darrin Johnson, UnitedHealthcare Community Plan of Delaware to Senator Thomas Carper (May 27, 2016) (on file with Committee). United's formulary is available by visiting: <https://www.optumrx.com/clientformulary/formulary.asp?var=UCSDLQ1&inoid=UCSDLQ1&page=insert&par=>, clicking "therapeutic class," clicking "Anti-Addiction/Substance Abuse Treatment Agents – Drugs for Overdose or Deterrents," and then clicking "Smoking Cessation Agents – Deterrents."
62. *Supra* note 19.
63. Murray Calls on Washington State Insurers to Increase Access, Transparency on Affordable Care Act Services that Help Tobacco Users Quit (Jun. 19, 2015), available at <http://www.murray.senate.gov/public/index.cfm/2015/6/murray-calls-on-washington-state-insurers-to-increase-access-transparency-on-affordable-care-act-services-that-help-tobacco-users-quit>; Elizabeth Regan, *Blumenthal Calls on Insurance Companies to Help Smokers Quit*, CT NEWS JUNKIE (Aug. 27, 2015), available at [http://www.ctnewsjunkie.com/archives/entry/blumenthal\\_calls\\_on\\_insurance\\_companies\\_to\\_help\\_smokers\\_quit/](http://www.ctnewsjunkie.com/archives/entry/blumenthal_calls_on_insurance_companies_to_help_smokers_quit/).
64. Murray, Carper, Senate Dems: More to Do to Fully Implement ACA Tobacco Cessation Benefits, Offer Tobacco Users Tools to Quit (Jun. 17, 2016), available at <https://www.hsgac.senate.gov/media/minority-media/murray-carper-senate-dems-more-to-do-to-fully-implement-aca-tobacco-cessation-benefits-offer-tobacco-users-tools-to-quit>.