Report of CMS Guidance Pursuant to Item 479 F of the 2024 General Appropriations Act

Submitted to the
Joint Commission on Health Care and
the Health Insurance Reform Commission

State Corporation Commission
Bureau Of Insurance

September 1, 2024

COMMONWEALTH OF VIRGINIA

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The Honorable Rodney T. Willett, Chair
Joint Commission on Health Care

The Honorable Ghazala F. Hashmi, Vice Chair
Joint Commission on Health Care

The Honorable Richard C. (Rip) Sullivan, Jr., Chair
Health Insurance Reform Commission

The Honorable R. Creigh Deeds, Vice Chair
Health Insurance Reform Commission

Dear Commission Chairs and Vice Chairs:

Through Item 479 F of the 2024 Appropriation Act, the General Assembly directed the Bureau of Insurance to request certain specified guidance from the Centers for Medicare and Medicaid Services relating to nutritional counseling and prior authorization for eating disorder services and communicate that information to the Joint Commission on Health Care and the Health Insurance Reform Commission by September 1, 2024.

The Bureau is available to discuss the contents of this report should you have any questions or need additional information.

Respectfully submitted,

Scott A. White
Commissioner of Insurance

Report of CMS Guidance
Pursuant to Item 479 F
of the 2024 General Appropriations Act

Introduction

Through Item 479 F of the 2024 Appropriation Act,[1] the General Assembly directed the Bureau of Insurance (Bureau) to request guidance from the Centers for Medicare and Medicaid Services (CMS) on the following two areas of inquiry:

> (i) How nutritional counseling is defined as a preventive care benefit under the Patient Protection and Affordable Care Act and review whether the current definition of nutritional counseling in Virginia's Essential Health Benefit benchmark plan meets federal guidelines; and
>
> (ii) Whether removing prior authorization for eating disorder services would be considered an expansion of services that would warrant a state-funded cost defrayal under the Patient Protection and Affordable Care Act.

The Bureau is to report the findings to the Joint Commission on Health Care and the Health Insurance Reform Commission by September 1, 2024.

Methodology

The Bureau contacted the CMS on May 18, 2024, to make a written request for guidance. The CMS responded via a telephone conversation held on July 19, 2024, among several Bureau staff and a representative of the State Corporation Commission's Office of General Counsel. The information in this report is based on the Bureau's understanding of its discussion with CMS and its awareness of the regulatory environment.

The CMS Response

i. *How nutritional counseling is defined as a preventive care benefit under the Patient Protection and Affordable Care Act and review whether the current definition of nutritional counseling in Virginia's Essential Health Benefit benchmark plan meets federal guidelines.*

Carriers must provide coverage for preventive care services pursuant to 45 CFR 147.130. Additionally, under 45 CFR 156.115(a)(4), a health plan provides essential health benefits (EHB) if, among other benefits, the plan includes preventive health services described in 45 CFR 147.130 as specifically enumerated by recommendations of named agencies, such as the U.S. Preventive Services Task Force and the Advisory Committee on Immunization Practices, and through guidelines supported by the Health Resources and

[1] *See* 2024 Va. Acts Spec. Sess I ch. 2.

Services Administration. The CMS defers to these organizations to set the specific guidelines and requirements for preventive health services, which are subject to change.

Further, § 38.2-3442 of the Code of Virginia (Code) requires a health carrier to cover preventive services under current recommendations and guidelines of the Patient Protection and Affordable Care Act, without imposing any cost-sharing requirements such as a copayment, coinsurance, or deductible. Additionally, "preventive services" are defined in § 38.2-3438 of the Code, as those evidence-based items or services, immunizations, and evidence-informed screenings as recommended in the guidelines and recommendations of the organizations identified by the Patient Protection and Affordable Care Act. Therefore, Virginia law mirrors the preventive health services required under the Patient Protection and Affordable Care Act.

Since the recommendations and guidelines are constantly changing and updating, and because the Patient Protection and Affordable Care Act does not define the specificities of a given preventive care benefit, CMS declined to say whether or not the Virginia essential health benefit benchmark plan (EHB-BP) reflects or exceeds the required preventive health services. The CMS does not recommend that an EHB-BP define the specifics of a preventive care benefit. Instead, CMS recommends that the EHB-BP point to the requirements of the Patient Protection and Affordable Care Act and the most recent recommendations and guidelines of the entities tasked with establishing preventive health services specifics. Additionally, states can provide guidance and review carrier benefit plan documents to confirm that specific services are identified, if preferred.

Virginia's 2024 and 2025 EHB-BP requires health carriers to provide coverage for preventive care with no cost share that meets the requirements of federal and state law. The EHB-BP generally sets out covered screenings and immunizations addressed in recommendations by the U.S. Preventive Services Task Force and the Advisory Committee on Immunization Practices and guidelines supported by the Health Resources and Services Administration, and referencing the following websites for the most current recommendations, immunizations and guidelines carriers are required to cover: A and B Recommendations | United States Preventive Services Task Force (uspreventiveservicestaskforce.org) and Preventive Guidelines and Screenings for Women, Children, and Youth | MCHB (hrsa.gov)

According to the A and B recommendations of the U.S. Preventive Services Task Force as of the date of this communication, it is the Bureau's understanding that comprehensive health coverage must provide the following preventive care benefits related to nutritional counseling at no cost share:

- Offering or referring adults with cardiovascular disease risk factors to behavioral counseling interventions to promote a healthy diet and physical activity;

- Offering pregnant persons effective behavioral counseling interventions aimed at promoting healthy weight gain and preventing excess gestational weight gain in pregnancy;

- Screening for obesity in children and adolescents 6 years and older, and offering or referring them to comprehensive, intensive behavioral interventions to promote improvements in weight status;

- Screening for prediabetes and type 2 diabetes in adults aged 35 to 70 years who have overweight or obesity, and offering or referring patients with prediabetes to effective preventive interventions; and

- Offering or referring adults with a body mass index (BMI) of 30 or higher (calculated as weight in kilograms divided by height in meters squared) to intensive, multicomponent behavioral interventions.

Intensive, multicomponent behavioral weight loss interventions "help people make healthy eating choices, encourage increased physical activity, and help people monitor their own weight" and are offered or provided by primary care clinicians.[2] The service can be counseling in a group or classroom setting and can be face-to-face or via social media.[3]

The EHB-BP specifically lists nutritional counseling as covered for preventive care and for home care services. This would indicate the benefit is covered as a preventive care benefit according to current guidelines and recommendations and as a non-preventive care benefit when medically necessary. The CMS clarified that carriers do not provide EHB if their benefit design imposes limitations that discriminate based on an individual's age, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions, where there is no clinical basis for the limitation.[4] Therefore, carriers must not place limits on nutritional counseling in its benefit design, such as excluding nutritional counseling for other health conditions for which a clinical basis exists.

In sum, the preventive care benefit for nutritional counseling as defined in Virginia's EHB-BP meets federal guidelines. The non-preventive care benefit for nutritional counseling in the EHB-BP is required to be provided for home care services and any other condition for which it is clinically based. The non-preventive care benefit may be subject to cost sharing.

ii. Whether removing prior authorization for eating disorder services would be considered an expansion of services that would warrant a state-funded cost defrayal under the Patient Protection and Affordable Care Act.

The CMS informed the Bureau that a legislative mandate removing prior authorization for eating disorder services:

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[2] U.S. Preventive Services Task Force Releases Updated Recommendation on Weight Loss to Prevent Obesity-Related Mortality in Adults - News & Events | health.gov

[3] *Id.*

[4] 45 CFR 156.125

- Would not be considered to require benefits that are in addition to EHB;
- Would not trigger state defrayal;
- Would not require Virginia to change its EHB-BP to carry out such a legislative mandate; and
- Would not be viewed as a potentially discriminatory plan design since prior authorization is medical management and not part of EHB.

Although CMS provides coaching to states on these federal rules, it views states as responsible for determining compliance.