



Prevent as a Preventive Benefit

As Omada Health continues to pioneer the emerging field of digital therapeutics, we have been asked by many prospective clients to take a position on whether Prevent, our flagship program focused on preventing diabetes, can be considered as a preventive benefit under the Affordable Care Act (ACA). This document provides Omada Health's historical point of view, which aligns with the legal guidance provided by Hooper, Lundy & Bookman, PC.

The ACA, enacted on March 23, 2010, defines a preventive benefit as "routine health care that includes check-ups, patient counseling and screenings to prevent illness, disease and other health-related problems." Most health plans (those created on or after March 23, 2010 and thus not grandfathered into the law) are required to cover a set of preventive services at no cost to an individual (meaning the individual will not be responsible for copayment or coinsurance, and will not have to meet their deductible prior to receipt of the above-mentioned preventive services). In other words, "first dollar coverage" would not apply to the individual. Specifically, the ACA states that "Type 2 Diabetes screening for adults with high blood pressure," as well as "obesity screening and counseling for all adults" should be covered as preventive benefits. Prevent fits this definition by focusing on (1) adults (age 18+) who are (2) obese or at risk of becoming obese (indicated by BMI), and who (3) have demonstrated risk factors associated with developing Type 2 diabetes.

To date, Prevent has been defined as a preventive benefit by all of our clients (e.g., payers and employers). In fact, 100% of Omada clients that have billed Prevent through medical claims have included Prevent as a preventive benefit. While individual client determinations are made at the discretion of and with guidance from respective counsel, external guidance from Hooper, Lundy & Bookman provides similar guidance in the Legal Memorandum, attached. Please see the attached memo for additional information regarding their opinion.

We are currently billing through claims with a number of health plans on behalf of their employer customers, and if you would like to take a similar route we are happy to help. We look forward to working with you to decrease the risk of Type 2 diabetes in your population.

Disclaimer: Please note that Omada is not providing legal advice, so please consult with your legal counsel before moving forward with covering Prevent as a preventive benefit.

MEMORANDUM

TO: Sean Duffy
Adrian James
Mike Payne

FILE NO: 63505.906

FROM: Stephen K. Phillips

DATE: September 17, 2014

RE: First Dollar Coverage Eligibility

This memo addresses whether Prevent is eligible for “first dollar coverage” under a high deductible health plan (HDHP).

Whether Prevent is eligible for first-dollar coverage under an HDHP depends on whether it is considered “preventive care” for the purposes of 26 U.S.C. § 223(c)(2)(C). In a notice provided last year (Notice 2013-57), the IRS conceptualized preventive care fairly broadly, including not only what most health plans are required to provide with no cost-sharing based on the ACA’s new preventive care requirements under Section 2713 of the Public Health Services Act, but also a non-exhaustive set of services that the IRS identified as “preventive care” for the purposes of this very same question prior to the passage of the ACA.

Prevent can likely be considered preventive care under this framework. The recent rulemaking around the ACA’s preventive services requirements requires non-grandfathered group health plans (like employer-sponsored HDHPs) and insurance coverage offered in the individual or group market to cover a set of recommended preventive services from the U.S. Preventive Services Task Force (USPSTF).¹ Specifically, plans and health insurance issuers must provide, without cost-sharing requirements, preventive services that the USPSTF recommends with an “A” or “B” rating for the individual involved. 45 C.F.R. § 147.130(a)(1)(i).

On August 26, 2014, the USPSTF published its recommendation statement on behavioral counseling to promote a healthful diet and physical activity, which received a “B” rating:

The USPSTF recommends offering or referring adults who are overweight or obese and have additional cardiovascular disease (CVD) risk factors to intensive behavioral counseling interventions

¹ CMS, Affordable Care Act Implementation FAQs (Set 12) (Feb. 20, 2013), *available at* http://www.cms.gov/CCHIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs12.html.

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to promote a healthful diet and physical activity for CVD prevention.²

CVD risk factors include “impaired fasting glucose” (i.e., prediabetes). Prevent not only serves the target population, but also the USPSTF recognized and detailed the “well-researched” Diabetes Prevention Program, the model followed by Prevent.

Additional USPSTF recommendations currently include “screening for and management of obesity in adults,” as well as diabetes screening. Both of these were also considered preventive services by the IRS specifically for this HDHP purpose prior to the passage of the ACA. Specifically, the IRS identified “obesity weight-loss programs, obesity screening, and diabetes screening.”

² U.S. Preventive Services Task Force, *Behavioral Counseling to Promote a Healthful Diet and Physical Activity for Cardiovascular Disease Prevention in Adults With Cardiovascular Risk Factors: U.S. Preventive Services Task Force Recommendation Statement*. *Annals Internal Med.* (Aug. 26, 2014), <http://annals.org/article.aspx?articleid=1899533#UpdateofPreviousUSPSTFRecommendation> (online-only version, last visited Sept. 12, 2014).