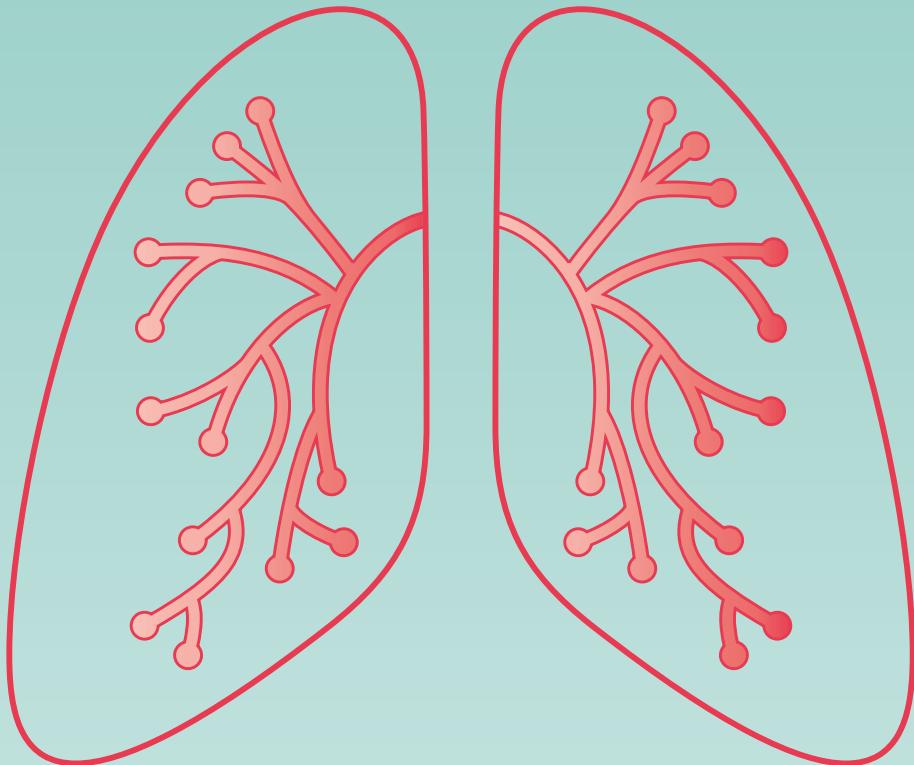


Tobacco Cessation Counseling

Understanding Medicaid, Medicare, and Private Insurance Coverage



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CENTER for HEALTH LAW
and POLICY INNOVATION
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ABOUT THE AUTHORS

The Center for Health Law and Policy Innovation of Harvard Law School advocates for legal, regulatory, and policy reforms to improve the health of underserved populations, with a focus on the needs of low-income people living with chronic illnesses. CHLPI works with consumers, advocates, community-based organizations, health and social services professionals, food providers and producers, government officials, and others to expand access to high-quality health care and nutritious, affordable food; to reduce health disparities; to develop community advocacy capacity; and to promote more equitable and effective health care and food systems. CHLPI is a clinical teaching program of Harvard Law School and mentors students to become skilled, innovative, and thoughtful practitioners as well as leaders in health, public health, and food law and policy.

The LuCa National Training Network provides training and materials for primary care providers, as well as technical assistance for professionals who educate providers and other health care professionals on lung cancer prevention, early detection, treatment, and survivorship care. LuCa works with health systems, state cancer coalitions, provider organizations, and others interested in engaging providers around lung cancer topics, with a particular emphasis on screening and tobacco cessation.

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INTRODUCTION / HOW TO USE THIS RESOURCE

Access to affordable preventive services like tobacco cessation counseling can make a critical difference in the lives of individuals living with or at risk for lung cancer. However, health insurance coverage for preventive services can vary widely between insurance programs and individual insurers. This resource is designed to help health care providers, patients, and advocates navigate this complex coverage landscape. The resource is broken into the following four sections:

- **Part I: Overview of Insurance/Payer Coverage,**
- **Part II: Conducting Your Own Research,**
- **Part III: Frequently Asked Questions, and**
- **Part IV: Additional Resources**

Part I provides an overview of the current status of coverage for tobacco cessation counseling for adults enrolled in Medicaid, Medicare, and private insurance plans. **Part II** then provides strategies for conducting additional research regarding these programs. **Part III** examines frequently asked questions related to insurance coverage and restrictions. Finally, **Part IV** provides a list of additional resources that readers can access to learn more about this topic.

Please note that this resource outlines what coverage should look like based on current national requirements and guidance. Individual insurers may vary in their implementation of these requirements. To confirm coverage within a particular plan, contact the individual insurer.

I. OVERVIEW OF INSURANCE/PAYER COVERAGE

Tobacco Cessation Counseling: Tobacco cessation counseling is a blanket term for behavioral interventions to encourage individuals to cease use of cigarettes and other tobacco products. Counseling may be provided individually or in a group and may be in-person or over the phone. For the purposes of this resource, we will be examining coverage of tobacco cessation counseling for adults only.

This first section provides an overview of the current status of insurance coverage for these services based on current federal laws, regulations, and guidance. Where coverage is **not** uniform within a particular program, the overview chart states that coverage "**varies**." In these situations, you will need to reach out to individual insurers (e.g., your state Medicaid program) to determine coverage.

Important Caveat Regarding Cost-Sharing: The chart below indicates when payers may not charge cost-sharing for the tobacco cessation counseling **itself**. Patients **may** face additional charges under certain circumstances (e.g., if the patient receives **other** services during the visit in addition to counseling or if the health care provider charges a **facility fee**). To avoid unexpected medical bills, it is therefore important for patients to speak with their health plan and provider prior to receiving counseling services to understand any charges that may occur.

- **Note on Medicare Advantage Plans:** Medicare Advantage plans are **prohibited** from charging a patient for a facility fee, professional services, or physician office visits when the only service received is tobacco cessation counseling.¹

| Insurer | Coverage (Y/N) | Population Covered | Cost-Sharing | Details / Limitations |
|--|-----------------------|--|---------------------|---|
| Medicaid (Traditional)² | Varies | Adults who are not pregnant who currently use tobacco. | Varies ⁴ | CMS and Public Health Service guidelines indicate that the counseling benefits for pregnant women should include the following, but exact details of coverage may vary by state: At least two cessation attempts per year, with each attempt including: <ul style="list-style-type: none">· Four face-to-face counseling sessions⁶ |
| Medicaid (Traditional — Pregnant Women)³ | Yes | Pregnant women who use tobacco. | No ⁵ | |
| Medicaid (Expansion)⁷ | Yes | All adults who use tobacco. | No ⁸ | The U.S. Departments of Health and Human Services, Labor, and Treasury have provided guidance indicating coverage that includes the following would be considered compliant with coverage requirements: <ul style="list-style-type: none">· At least two cessation attempts per year, with each attempt including:<ul style="list-style-type: none">o Four cessation counseling sessions of at least 10 minutes each (telephone, individual, or group counseling)o Without prior authorization However, the guidance leaves room for variation, and so patients and providers should check with the individual plan to confirm coverage details. ⁹ |
| Original Medicare¹⁰ | Yes | Medicare beneficiaries who use tobacco, irrespective of symptoms of tobacco-related diseases, who are competent and alert when counseling occurs, when the counseling is furnished by a qualified physician or other Medicare-recognized practitioner. | No ¹¹ | Coverage includes: <ul style="list-style-type: none">· Two (2) individual tobacco cessation attempts per 12-month period;· Each attempt may include a maximum of 4 intermediate or intensive sessions· A total of 8 sessions per year.¹² Tobacco cessation counseling can be provided via telehealth if Medicare telehealth requirements are met. ¹³ |
| Medicare Advantage¹⁴ | Yes | Medicare beneficiaries who use tobacco, irrespective of symptoms of tobacco-related diseases, who are competent and alert when counseling occurs, when the counseling is furnished by a qualified physician or other Medicare-recognized practitioner. | No ¹⁵ | Medicare Advantage plans must cover at least the same number of sessions as are covered in Original Medicare. Medicare Advantage plans may also provide additional sessions as a supplemental benefit. Tobacco cessation counseling can be provided via telehealth if telehealth requirements are met. ¹⁶ Beginning in 2020, Medicare Advantage plans have additional flexibility in providing telehealth services. ¹⁷ |
| Group / Individual¹⁸ (non-grand-fathered)¹⁹ | Yes | All adults who use tobacco. | No | The U.S. Departments of Health and Human Services, Labor, and Treasury have provided guidance indicating coverage that includes the following would be considered compliant with coverage requirements: <ul style="list-style-type: none">· At least two cessation attempts per year, with each attempt including:<ul style="list-style-type: none">o Four cessation counseling sessions of at least 10 minutes each (telephone, individual, or group counseling)o Without prior authorization However, the guidance leaves room for variation, and so patients and providers should check with the individual plan to confirm coverage details. ²⁰ |
| Short-Term Health Insurance Plans | Varies | Varies | Varies | Short-term health insurance plans are <u>not</u> considered individual health insurance plans and <u>not</u> subject to the preventive service coverage requirements of the Affordable Care Act. ²¹ Coverage and cost-sharing for tobacco cessation counseling in these plans therefore may vary greatly. |

II. CONDUCTING YOUR OWN RESEARCH

A. Medicaid

i. Program Overview

Medicaid is our nation's safety net health insurance program. Traditionally, Medicaid has provided health insurance coverage to low-income families, children, pregnant women, the elderly, and people with disabilities. Under the Affordable Care Act, states now also have the option to provide coverage to the Medicaid expansion population, which includes all adults with incomes up to 138% of the federal poverty level. While states that have chosen to expand coverage have generally tried to align coverage between their traditional and expansion populations, some distinctions remain.

ii. Research Strategies

Over time, medical advances and new legal requirements may alter the Medicaid coverage landscape. You can use the following strategies and resources to conduct your own research and determine the current status of coverage for tobacco cessation counseling services.

- **Traditional Medicaid:** Tobacco cessation counseling is generally considered an optional service for traditional Medicaid populations. However, the Affordable Care Act imposed stricter requirements on states to cover tobacco cessation treatments for pregnant women. Section 4107 of the Affordable Care Act requires pregnant women be provided counseling and pharmacotherapy for tobacco cessation, which includes diagnostic, therapy, and counseling services, and pharmacotherapy, including FDA-approved prescription and non-prescription medications used for tobacco cessation.
- **Medicaid Expansion Status by State:** States which elect to expand Medicaid coverage under the Affordable Care Act to adults with incomes up to 138% of the federal poverty level must abide by different requirements for that population. To determine whether your state has opted to expand Medicaid, you can visit the Kaiser Family Foundation website, which provides an [interactive map](#) of states which [have](#) elected to cover the Medicaid expansion population.
- **USPSTF Coverage Recommendations:** Coverage and cost-sharing limitations for tobacco cessation counseling in the Medicaid expansion population depend largely on the United States Preventive Service Task Force ("USPSTF") recommendation regarding this service. States [must](#) cover all USPSTF "A" and "B" rated services for individuals in the Medicaid expansion population without cost-sharing.²² Currently, the USPSTF provides an "A" rating for its recommendation on "Tobacco Smoking Cessation in Adults, Including Pregnant Women: Behavioral and Pharmacotherapy Interventions." This recommendation states that clinicians should ask all adults about tobacco use, advise them to stop using tobacco, and provide behavioral interventions for cessation. The recommendation does not explicitly state the scope of the behavioral interventions that must be covered. In the past, HHS has provided guidance encouraging states to cover at least two cessation attempts per year, with each attempt including four cessation counseling sessions of at least 10 minutes each (telephone, individual, or group counseling) without prior authorization, but you should check with your Medicaid agency or Medicaid managed care plan for exact coverage details.²³
 - **Finding USPSTF Recommendations:** You can stay up to date on USPSTF service recommendations by visiting [their website](#) and using the search feature to locate relevant recommendations. For example, searching for "tobacco" reveals the current USPSTF recommendation for Tobacco Smoking Cessation in adults, as well as information regarding ongoing efforts to update this recommendation.
 - **Note on Changes to USPSTF Recommendations:** If changes occur to a USPSTF recommendation,

Medicaid expansion plans must reflect the change in plan years that begin one year after the new recommendation is published.²⁴ For example, if the USPSTF were to update its recommendation for tobacco smoking cessation in adults in November 2019 and your state's Medicaid expansion plan's plan years begin on January 1st, the plan would have to reflect that new recommendation beginning on January 1, 2021.

- **Federal Regulations:** You can find additional high-level information on Medicaid coverage requirements in federal regulations. To find the relevant regulations, visit the electronic Code of Federal Regulations, select "[Title 42 – Public Health](#)" from the options provided, and follow the links to your desired subject. Most regulations related to Medicaid can be found in [Parts 430 – 456](#).
- **Individual Plan Information:** States may vary in what preventive services they choose to cover for their traditional Medicaid population and the exact details of coverage for the expansion population. Therefore, you must generally check local resources such as state laws, regulations, or guidance to determine whether and how tobacco cessation counseling is covered. You can also contact your state Medicaid agency directly. Some helpful compilations are also available online. For example, the American Lung Association has compiled an interactive resource (see *Additional Resources* below) which lays out all 50 states' treatment of tobacco cessation. However, keep in mind that these types of resources may become out-of-date and/or may be based on survey responses that are not consistently reliable. Therefore, it is always a good idea to confirm coverage with your state Medicaid agency and/or with individual Medicaid plans if your state uses Medicaid Managed Care Organizations (MMCOs) to deliver care.

- **Additional Resources**

| Insurer | Resource | Description |
|----------|---|--|
| Medicaid | State Tobacco Cessation Coverage²⁵ | The American Lung Association has compiled an interactive resource which describes tobacco cessation coverage under all 50 states' Medicaid plans. |

B. Medicare

i. Program Overview

Medicare is the primary public health insurance program for elderly individuals in the United States. Specifically, Medicare provides insurance coverage for individuals aged 65 or older, some disabled individuals, and individuals living with end-stage renal disease (ESRD) or amyotrophic lateral sclerosis (ALS). Medicare is broken into four parts: Medicare Part A (hospital insurance), Medicare Part B (medical insurance), Medicare Part C (Medicare Advantage), and Medicare Part D (drug coverage).

Roughly two thirds of Medicare beneficiaries receive their Medicare coverage directly from the federal government (Original Medicare a/k/a Medicare Parts A & B). The remaining third receive their Medicare coverage from private insurers (Medicare Advantage a/k/a Medicare Part C). Medicare Advantage plans must generally cover all services covered in Original Medicare (except hospice services), making coverage very similar between these two programs. However, Medicare Advantage plans also have some flexibility to go beyond Original Medicare to cover additional services.

Some individuals that have Original Medicare also have a Medicare Supplement (a/k/a Medigap) plan provided by a private insurer. These Supplement plans help to pay some of costs that Original Medicare doesn't cover (e.g., coinsurance, deductibles, etc.) and may include coverage for some services that Original Medicare does not cover.²⁶

ii. Research Strategies

Over time, medical advances and new legal requirements may alter the Medicare coverage landscape. You can use the following strategies and resources to conduct your own research and determine the current status of coverage for tobacco cessation counseling services.

- **USPSTF Coverage:** The Secretary of Health and Human Services (HHS) **may choose** to cover USPSTF "A" and "B" rated preventive services within the Medicare program (thereby requiring coverage in both Original Medicare and Medicare Advantage). Medicare **may not** impose cost-sharing for these services. You can stay up to date on USPSTF service recommendations by visiting [their website](#) and using the search feature to locate relevant recommendations. For example, searching for "tobacco" reveals the current USPSTF recommendation for tobacco smoking cessation in adults, as well as information regarding ongoing efforts to update this recommendation.
- **Coverage Determinations:** To determine whether a particular USPSTF "A" or "B" rated preventive service **is covered** in the Medicare program, you can research whether the Secretary of HHS has made a **coverage determination** for that service. Coverage determinations may also provide important details such as what requirements must be met for reimbursement. To determine whether a coverage determination has been made for a particular service, visit the [Medicare Coverage Database](#), and enter key words, such as "tobacco," into the search bar. Doing so allows you to find the current [National Coverage Determination for Counseling to Prevent TOBACCO Use \(210.4.1\)](#).
- **Regulations:** You can find additional high-level information on coverage requirements in federal Medicare regulations. If you wish to do further research, you can visit the electronic Code of Federal Regulations, select "[Title 42 – Public Health](#)" from the options provided, and follow the links to your desired subject. Regulations related to Medicare can be found in [Parts 400 – 426 and 482 - 498](#).
- **Medicare Manuals:** The Centers for Medicare and Medicaid Services (CMS) publishes [electronic manuals](#) that provide additional details regarding coverage of services in the Medicare program. Manuals that may be particularly important to researching coverage of tobacco counseling services include: the [Medicare National Coverage Determination \(NCD\) Manual \(CMS Pub. 100-3\)](#), the [Medicare Claims Processing Manual, Ch. 18 - Preventive and Screening Services](#), the [Medicare Claims Processing Manual, Ch. 32 – Billing Requirements for Special Services](#), and, for individuals in Medicare Advantage plans, the [Medicare Managed Care Manual, Ch. 4 – Benefits and Beneficiary Protections](#).
 - **Change Request Transmittals:** To announce official changes to the Medicare Manuals, CMS will publish a [Change Request Transmittal](#). These Transmittals signal changes in policy to actors in the Medicare system, including Medicare Administrative Contractors (MACs). For example, transmittals that are particularly important to coverage of tobacco cessation counseling include: [Transmittal 202](#), [Transmittal 3602](#), and [Transmittal 3848](#).
- **Individual Plan Information:** Individuals who receive Medicare coverage through Medicare Advantage may be subject to additional conditions through the individual plans (e.g., prior authorization, plan network, and coding requirements). Contact the individual plan if you have any questions about requirements for screening services.
- **Additional Resources**

| Insurer | Resource | Description |
|----------|--|--|
| Medicare | Your Medicare Coverage ²⁷ | This database provides general information about what services are covered under Medicare. |

C. Private Insurance Plans - Group and Individual Insurance

i. Program Overview

Group insurance plans are private plans which provide health insurance coverage to members of a group, which tend to be employees of a company or members of an organization. In contrast, individual insurance plans are private plans which are purchased directly by consumers, typically on a state or federal-run marketplace, and are not provided by an employer or other group.

While the benefits covered by group and individual plans can vary more broadly than in public insurance programs, the Affordable Care Act introduced new coverage requirements that create a uniform baseline of preventive service coverage in almost all private plans.

ii. Research Strategies

Over time, medical advances and new legal requirements may alter the private insurance coverage landscape. You can use the following strategies and resources to conduct your own research and determine the current status of coverage for tobacco cessation counseling services.

- **USPSTF Coverage:** Tobacco cessation counseling coverage and cost-sharing limitations under group and individual insurance depend largely on whether the United States Preventive Service Task Force ("USPSTF") has given the service an "A" or "B" recommendation. Under the Affordable Care Act, individual and group plans generally **must** cover all "A" and "B" rated services without cost-sharing. Currently, the USPSTF provides an "A" rating for its recommendation on "Tobacco Smoking Cessation in Adults, Including Pregnant Women: Behavioral and Pharmacotherapy Interventions." This recommendation states that clinicians should ask all adults about tobacco use, advise them to stop using tobacco, and provide behavioral interventions for cessation. The recommendation does not explicitly state the scope of the behavioral interventions that must be covered. In the past, HHS has provided guidance encouraging plans to cover at least two cessation attempts per year, with each attempt including four cessation counseling sessions of at least 10 minutes each (telephone, individual, or group counseling) without prior authorization, but you should check with your individual payer for exact coverage details.²⁸
 - **Finding USPSTF Recommendations:** You can stay up to date on USPSTF service recommendations by visiting [their website](#) and using the search feature to locate relevant recommendations. For example, searching for "tobacco" reveals the current USPSTF recommendation for Tobacco Smoking Cessation in adults, as well as information regarding ongoing efforts to update this recommendation.
 - **Note on Changes to USPSTF Recommendations:** If changes occur to a USPSTF recommendation, plans must reflect the change in plan years that begin one year after the new recommendation is published.²⁹ For example, if the USPSTF were to update its recommendation for tobacco smoking cessation in adults in November 2019 and your insurer's plan years begin on January 1st, the plan would have to reflect that new recommendation beginning on January 1, 2021.
- **Grandfathered Status:** Group and individual insurance plans which existed at the time the Affordable Care Act was enacted in 2010 may be **exempt** from some of the Act's requirements, including the requirement to cover USPSTF "A" and "B" rated services. Federal regulations at [45 C.F.R. Section 147.140](#) lay out the events which cause a plan to lose grandfathered status. If you have further questions about particular plans, you should contact the plan administrator, as individual plans are required to disclose information related to grandfathered status.
- **Short-term Plans:** Short-term health plans are **not** considered individual insurance plans under the Affordable Care Act and are **exempt** from many of the Act's requirements, including the requirement to

cover USPSTF “A” and “B” rated services.³⁰ Therefore, coverage and cost-sharing for tobacco cessation counseling will vary greatly in these plans. To determine coverage and cost-sharing in short-term plans, you will need to consult plan documents or contact the plan directly.

III. FREQUENTLY ASKED QUESTIONS

A. What if the Patient Lacks Insurance or Fails to Meet Eligibility Requirements?

Patients who lack coverage under the insurance regimes described in this resource, or who fail to meet the eligibility requirements of those insurance regimes will generally be required to pay for the services out of pocket.

B. What is Prior Authorization?

Prior authorization is the process by which health care providers must obtain advanced approval from a health insurance plan before a prescribed procedure, service, or medication is delivered to the patient to qualify for payment coverage under the plan. Prior authorization requirements are rare in Original Medicare, but common in most other insurance programs. Prior authorization requirements vary by plan. Therefore, to determine if a plan has a prior authorization requirement tobacco cessation counseling, you should consult the individual plan materials and/or call the plan.

C. What if Tobacco Cessation Counseling is Delivered by an Out-of-Network Provider?

If a patient receives tobacco cessation counseling services from a health care provider that is not part of their plan’s network, they may face additional costs. For example, the Affordable Care Act does not require private plans to cover USPSTF “A” and “B” rated services that are provided out-of-network unless the plan does not have providers that can provide them in-network (in which case, the plan would be required to cover USPSTF services from out-of-network providers without cost-sharing³¹). Similarly, patients in Medicare Advantage plans may face cost-sharing requirements if they receive tobacco cessation counseling outside of their plan’s network.

Individuals covered by Original Medicare may also face higher costs when they choose to receive services from health care providers who are not part of the Medicare program. Health care providers may choose to opt out of Medicare, or otherwise become a non-participating provider, each of which can result in cost-sharing for the patient. Non-participating providers accept Medicare, but do not accept Medicare’s approved amount for health services as full payment. Non-participating providers may charge up to 115 percent of the Medicare-allowed charge for the service, but Medicare will pay up to the allowed limit, leaving the difference to be paid out of pocket.³² Providers who choose to opt out of Medicare do not accept Medicare reimbursement for provided services, and are not limited by Medicare-allowed charge schedules when charging for services.

D. What Codes Should I Provide When Billing Original Medicare for Tobacco Cessation Counseling?

In order to obtain reimbursement for tobacco cessation counseling for Original Medicare enrollees, health care providers must bill the Medicare program using the proper codes for each service. The chart below highlights the codes used for tobacco cessation counseling. CMS has also provided a variety of detailed guidance documents regarding proper coding procedures (highlighted in the “Detailed Resources on Proper Coding” column). **Health care providers should consult their billing department and these detailed documents before attempting to bill for services.** To bill a payer other than Original Medicare, please consult with the individual payer for coding requirements.

| Code(s) | Notes | Detailed Resources on Proper Coding |
|--------------------------------|--|--|
| 99406 (intermediate) | <p>Scope of Benefit:</p> <ul style="list-style-type: none"> · Two (2) individual tobacco cessation attempts per 12-month period; · Each attempt may include a maximum of 4 intermediate or intensive sessions · A total of 8 sessions per year. <ul style="list-style-type: none"> ○ A full 11 months must pass after the initial session before sessions beyond the original 8 may be provided. "To start the count for the second or subsequent 12-month period, begin with the month after the month in which the first Medicare covered counseling session was performed and count until 11 full months have elapsed." <p>Definitions:</p> <ul style="list-style-type: none"> · Intermediate: Counseling visit is greater than 3 minutes, but not more than 10 minutes · Intensive: Counseling visit is greater than 10 minutes <p>Minimal cessation counseling (3 minutes or less) is considered part of each Evaluation and Management visit and is not separately billable.</p> <p>Symptoms: Medicare no longer differentiates between symptomatic and asymptomatic patients for these services.</p> <p>Provider: Counseling must be provided by a qualified physician or other Medicare-recognized provider. Non-recognized providers, such as Tobacco Treatment Specialists are not eligible for Medicare reimbursement.³³</p> <p>Service must be billed with proper ICD-10 diagnosis code, such as:</p> <ul style="list-style-type: none"> ○ F17.210 (Nicotine dependence, cigarettes, uncomplicated) ○ F17.211 (Nicotine dependence, cigarettes, in remission) ○ F17.213 (Nicotine dependence, cigarettes, with withdrawal) ○ F17.218 (Nicotine dependence, cigarettes, with other nicotine-induced disorders) ○ F17.219 (Nicotine dependence, cigarettes, with unspecified nicotine-induced disorders) ○ F17.220 (Nicotine dependence, chewing tobacco, uncomplicated) <p>For a full list, see Medicare Claims Processing Manual, Ch. 32 – Billing Requirements for Special Service, Section 12.1.</p> | <p>Medicare National Coverage Determination (NCD) Manual (CMS Pub. 100-3)</p> <p>Medicare Claims Processing Manual, Ch. 32 – Billing Requirements for Special Services, Section 12</p> <p>Transmittal 3848</p> |

IV. ADDITIONAL KEY RESOURCES

To learn more about insurance coverage of tobacco cessation services, you can consult these additional resources developed by advocacy organizations, professional associations, and other experts.

| Resource | Description |
|--|---|
| American Cancer Society Cancer Action Network : Tobacco Cessation Insurance Coverage | The American Cancer Society Cancer Action Network (ACS CAN) provides an overview of tobacco cessation insurance coverage and related issues, such as cost-sharing and prior authorization. ACS CAN also provides recommendations on policy changes to improve access to these services. |
| American Lung Association : State Tobacco Cessation Coverage | ALA provides a state-by-state analysis of coverage of tobacco cessation services across state insurance programs including Medicaid, individual plans, and the state employee health plan. |

Endnotes

- ¹ “Medicare Managed Care Manual, Ch. 4 – Benefits and Beneficiary Protections” at Section 50.2, Centers for Medicare and Medicaid Services, available at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/mc86c04.pdf>.
- ² Services rated “A” or “B” by the USPSTF are optional services under the traditional Medicaid regime, but are covered if a state chooses to cover these services. See 42 U.S.C. § 1396d(a)(13)(A); 42 C.F.R. §§ 440.130 (defining diagnostic, screening, preventive, and rehabilitative services), 440.225 (establishing services not required in 42 C.F.R. §§ 440.210, 440.220 as optional).
- ³ The Affordable Care Act imposed stricter requirements on states to cover tobacco cessation treatments for pregnant women. Section 4107 of the Affordable Care Act requires pregnant women be provided counseling and pharmacotherapy for tobacco cessation, which includes diagnostic, therapy, and counseling services, and pharmacotherapy, including FDA-approved prescription and non-prescription medications used for tobacco cessation. 42 U.S.C. §§ 1396d(a)(4)(D), (bb)(1).
- ⁴ Eliminating cost-sharing for the traditional Medicaid population is optional for states, which will receive a one-percent FMAP increase if they voluntarily enact a state plan amendment which covers and eliminates cost sharing for all “A” and “B” graded USPSTF services. See 42 U.S.C. § 1396d(b)(5). Note: The 1% increase applies only to coverage of these “A” and “B” rated services.
- ⁵ 42 U.S.C. § 1396o(a)(2)(B), (b)(2)(B); 42 U.S.C. § 1396o-1(b)(3)(B)(iii).
- ⁶ See “State Medicaid Director Letter 11-007: New Medicaid Tobacco Cessation Services,” Ctrs. For Medicare & Medicaid Svcs., 3 (June 24, 2011), available at <https://downloads.cms.gov/archived-downloads/SMDL/downloads/SMD11-007.pdf> (noting that states have flexibility in designing their benefit but that design should be informed by the PHS Guidelines, which suggest this amount of services).
- ⁷ 42 C.F.R. § 440.347(a)(9) (referencing Essential Health Benefit requirements in 45 C.F.R. § 156.115(a)(4) which reference preventive service requirements at 45 C.F.R. § 147.130(a)(1)(i)).
- ⁸ 78 Fed. Reg. 42159, 42226.
- ⁹ See “FAQs About Affordable Care Act Implementation Part 34 and Mental Health and Substance Use Disorder Parity Implementation,” U.S. Dep’t of Labor, 2-4 (Oct. 27, 2016), available at <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-34.pdf>. Note that this guidance document raises the question of whether the recommended scope of coverage should be changed in light of a change to the USPSTF recommendation. However, the Dep’t of Labor does not appear to have issued updated guidance. Therefore, in practice, scope of coverage may vary based on the uncertainty from the most recent guidance.
- ¹⁰ 42 U.S.C. § 1395k(a)(2)(B); 42 U.S.C. § 1395x(s)(2)(BB); 42 U.S.C. § 1395x(ddd)(1), (2). For the CMS decision to cover tobacco cessation counseling, see “National Coverage Determination (NCD) for Counseling to Prevent Tobacco Use (210.4.1)” Centers for Medicare and Medicaid Services (Sept. 26, 2017), available at [All&KeyWord=tobacco&KeyWordLookUp=Title&KeyWordSearchType=And&bc=gAAAACAAAAAA& \[https://perma.cc/GRX6-HVRW\].](https://www.cms.gov/medicare-coverage-database/details/ncd-details.aspx?NCDId=342&ncdver=2&CoverageSelection=Both&ArticleType=All&PolicyType=Final&s>All&KeyWord=tobacco&KeyWordLookUp=Title&KeyWordSearchType=And&bc=gAAAACAAAAAA& [https://perma.cc/GRX6-HVRW].</p><p>¹¹ 42 U.S.C. § 1395l(a)(1); 42 C.F.R. § 410.152(l).</p><p>¹² “National Coverage Determination (NCD) for Counseling to Prevent Tobacco Use (210.4.1)” Centers for Medicare and Medicaid Services (Sept. 26, 2017), available at <a href=)
- ¹³ See 42 C.F.R. § 410.78 (referencing “CY 2019 Final Rule List of Telehealth Services,” available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched/PFS-Federal-Regulation-Notices-Items/CMS-1693-F.html>); see also “Telehealth Services,” Medicare Learning Network, Centers for Medicare & Medicaid Services (Jan. 2019), available at https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/TelehealthSrvcsfctsht.pdf?utm_campaign=2a178f351b-EMAIL_CAMPAIGN_2019_04_19_08_59&utm_term=0_ae00b0e89a-2a178f351b-353229765&utm_content=90024810&utm_medium=social&utm_source=facebook&hss_channel=fbp-372451882894317.
- ¹⁴ 42 U.S.C. § 1395w-22; 42 C.F.R. § 422.100(c)(1) (requiring Medicare Advantage plans to cover all Medicare-covered services except hospice services); 42 U.S.C. § 1395x(ddd)(1), (2) (allowing the Secretary of HHS to provide coverage for USPSTF A and B rated services). For the CMS decision to cover tobacco cessation counseling, see “National Coverage Determination (NCD) for Counseling to Prevent Tobacco Use (210.4.1)” Centers for Medicare and Medicaid Services (Sept. 26, 2017), available at [https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched/PFS-Federal-Regulation-Notices-Items/CMS-1693-F.html](https://www.cms.gov/medicare-coverage-database/details/ncd-details.aspx?NCDId=342&ncdver=2&CoverageSelection=Both&ArticleType=All&PolicyType=Final&s>All&KeyWord=tobacco&KeyWordLookUp=Title&KeyWordSearchType=And&bc=gAAAACAAAAAA& [https://perma.cc/GRX6-HVRW].</p><p>¹⁵ 42 C.F.R. § 422.100(k).</p><p>¹⁶ See 42 C.F.R. § 410.78 (referencing “CY 2019 Final Rule List of Telehealth Services,” available at <a href=)); see also “Telehealth Services,” Medicare Learning Network, Centers for Medicare & Medicaid Services (Jan. 2019), available at https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/TelehealthSrvcsfctsht.pdf?utm_campaign=2a178f351b-EMAIL_CAMPAIGN_2019_04_19_08_59&utm_term=0_ae00b0e89a-2a178f351b-353229765&utm_content=90024810&utm_medium=social&utm_source=facebook&hss_channel=fbp-372451882894317

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¹⁷ See 42 C.F.R. § 422.135 (effective Jan. 1, 2020); 84 Fed. Reg.15829.

¹⁸ 42 U.S.C. § 300gg–13(a)(1).

¹⁹ Private insurance plans which maintain “grandfathered” status are not subject to the requirements of the Affordable Care Act. 42 U.S.C. § 18011(a). For a list of events which can cause a policy to lose its grandfathered status, see 45 C.F.R. § 147.140.

²⁰ See “FAQs About Affordable Care Act Implementation Part 34 and Mental Health and Substance Use Disorder Parity Implementation,” U.S. Dep’t of Labor, 2-4 (Oct. 27, 2016), available at <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-34.pdf>. Note that this guidance document raises the question of whether the recommended scope of coverage should be changed in light of a change to the USPSTF recommendation. However, the Dep’t of Labor does not appear to have issued updated guidance. Therefore, in practice, scope of coverage may vary based on the uncertainty from the most recent guidance.

²¹ 42 U.S.C. 300gg-91(b)(5); see also K. Lucia et al., “State Regulation of Coverage Options Outside of the Affordable Care Act: Limiting the Risk of the Individual Market,” The Commonwealth Fund (Mar. 2018).

²² 42 C.F.R. § 440.347(a)(9) (referencing Essential Health Benefit requirements in 45 C.F.R. § 156.115(a)(4) which reference preventive service requirements at 45 C.F.R. § 147.130(a)(1)(i)); 78 Fed. Reg. 42159, 42226 (incorporating the prohibition on cost-sharing).

²³ See “FAQs About Affordable Care Act Implementation Part 34 and Mental Health and Substance Use Disorder Parity Implementation,” U.S. Dep’t of Labor, 2-4 (Oct. 27, 2016), available at <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-34.pdf>. Note that this guidance document raises the question of whether the recommended scope of coverage should be changed in light of a change to the USPSTF recommendation. However, the Dep’t of Labor does not appear to have issued updated guidance. Therefore, in practice, scope of coverage may vary based on the uncertainty from the most recent guidance.

²⁴ See 42 C.F.R. § 440.347(a) (requiring Medicaid expansion plans to cover essential health benefits consistent with the requirements laid out for group and individual plans in 45 C.F.R. § 156); 45 C.F.R. § 156.115(a)(4) (requiring essential health benefits to include coverage of preventive health services as described in 45 C.F.R. § 147.130); 45 C.F.R. § 147.130(b)(1) (stating that coverage must begin “for plan years . . . that begin on or after the date that is one year after the date the recommendation or guideline is issued”).

²⁵ See “State Tobacco Cessation Coverage,” Am. Lung Ass’n, <http://www.lungusa2.org/cessation2/> (last visited July 5, 2019).

²⁶ See “What’s Medicare Supplement Insurance (Medigap)?,” Medicare.gov, <https://www.medicare.gov/supplements-other-insurance/whats-medicare-supplement-insurance-medigap> (last visited Oct. 11, 2019).

²⁷ “Your Medicare Coverage,” MEDICARE.GOV, available at <https://www.medicare.gov/coverage>.

²⁸ See “FAQs About Affordable Care Act Implementation Part 34 and Mental Health and Substance Use Disorder Parity Implementation,” U.S. Dep’t of Labor, 2-4 (Oct. 27, 2016), available at <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-34.pdf>. Note that this guidance document raises the question of whether the recommended scope of coverage should be changed in light of a change to the USPSTF recommendation. However, the Dep’t of Labor does not appear to have issued updated guidance. Therefore, in practice, scope of coverage may vary based on the uncertainty from the most recent guidance.

²⁹ See 45 C.F.R. § 147.130(b)(1) (stating that coverage must begin “for plan years . . . that begin on or after the date that is one year after the date the recommendation or guideline is issued”).

³⁰ 42 U.S.C. 300gg-91(b)(5); see also K. Lucia et al., “State Regulation of Coverage Options Outside of the Affordable Care Act: Limiting the Risk of the Individual Market,” The Commonwealth Fund (Mar. 2018).

³¹ 45 C.F.R. § 147.130(a)(3).

³² 42 C.F.R. § 414.48.

³³ See “Decision Memo for Counseling to Prevent Tobacco Use (CAG-00420N),” Centers for Medicare and Medicaid Services, available at <https://www.cms.gov/medicare-coverage-database/details/nca-decision-memo.aspx?NCAId=242&NCDId=342&ncdver=2&IsPopup=y&bc=AAAAAAAQAAA&>.

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