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Health Plan Coverage of Coronavirus Testing and Treatment

With the news about the spread of the 2019 novel coronavirus (“COVID-19”) in the U.S. and the world rapidly evolving, group health plan sponsors need to address how the plan will provide virus-related benefits.

High Deductible Health Plans

The IRS yesterday issued [Notice 2020-15](#) to advise that:

- A high deductible health plan (“HDHP”) can fully pay for all testing and medical treatment related to COVID-19 before the otherwise applicable annual minimum deductible has been met.
 - HDHP sponsors need to consider whether to change current plan design to provide this coverage without a deductible at all or with a deductible that is below the plan’s otherwise applicable annual minimum deductible amount. Because it is early in the year, many participants may not yet have hit the plan’s annual deductible limit. (Reminder, for 2020, the HDHP minimum annual deductible must be at least \$3,550 for self-only coverage and \$7,100 for family coverage.)
- Individuals participating in an HDHP that covers COVID-19 testing and treatment without a deductible or with a reduced deductible remain eligible to make contributions to their health savings accounts (HSAs).

Non-HDHP Plans

Group health plans, which are not HDHPs, also need to consider whether there should be any changes in plan design to address COVID-19-related testing and medical treatment. A number of state insurance commissioners, with more expected to follow, are issuing directives to health insurance carriers operating in their states to waive health plan cost-sharing, such as copayments, coinsurance and deductibles.

Vice President Pence, who is leading the federal government’s COVID-19 response, has announced that testing is deemed an “essential health benefit” within the meaning of the Affordable Care Act rules. This announcement impacts individual plans, small group insurance plans, and Medicaid. The announcement does not directly impose new requirements on large fully insured or self-insured group health plans, but it certainly put pressure on these plans to also take steps to address coverage of COVID-19 testing and related medical

treatment.

Employees with Medicare Coverage

If you have employees who have Medicare coverage, the Centers for Medicare & Medicaid Services (“CMS”) has issued [guidance](#) to provide information with respect to diagnosing and treating COVID-19 Medicare beneficiaries.

- As part of CMS’s efforts to address COVID-19, the CMS has issued two new HCPCS [codes](#) for health care providers and labs for COVID-19 testing.
- The CMS also has issued a [fact sheet](#), “Coverage and Payment Related to COVID-19 Medicare,” to summarize the services applicable to COVID-19 patients who are covered by Medicare. The fact sheet addresses diagnostic tests, vaccines, inpatient hospital care services, inpatient hospital quarantines, ambulatory services in a hospital or other location, telehealth and other communication-based technology services, requests for prescription refills, and emergency ambulance transportation. It also addresses Medicare Advantage (Part C) and Part D coverage.

Plan Sponsor Actions Required

In light of the spread of the virus, group health plan sponsors should consider the following actions:

- Decide whether the group health plan will cover COVID-19 testing and treatment without a deductible or with a reduced deductible.
 - We expect that many plans will cover COVID-19 testing and treatment without any deductible. Many insurers already have announced that they will provide this coverage with no deductible.
- Determine if a plan amendment is necessary to reflect the design decision.
 - This item is particularly relevant for self-funded plans because fully insured plans likely won’t have to adopt plan amendments since this coverage will be reflected in the health insurance policy (and the insurance company is primarily responsible for that document).
- Prepare and distribute a notice to inform participants about this coverage.
 - Consider including a statement recommending that employees take a copy of the notice with them if they need to go to their health care provider for COVID-19-related testing and treatment.
 - Consider including summary information for employees and family members who have Medicare coverage and provide a link to the CMS [fact sheet](#).
 - Certainly include some assurances but remind employees that this is a fluid situation with information being issued rapidly and constantly changing.

How We Can Help

Please contact one of us or your regular Brownstein attorney for answers to your questions and help to address your employees’ concerns about their group health coverage in light of the spread of the coronavirus. Among other things, we can help you determine if (and how) your plan needs to be amended, help you craft appropriate communications to your employees, and address HIPAA privacy concerns if an employee is diagnosed with the virus. We also have employment law experts who can help you navigate applicable state wage and leave laws.

[Click here](#) to read more *Brownstein alerts on the legal issues the coronavirus threat raises for businesses.*

Christopher M. Humes
Associate
chumes@bhfs.com
702.464.7094

Bryce C. Loveland
Shareholder
bcloveland@bhfs.com
702.464.7024

Adam P. Segal
Shareholder
asegal@bhfs.com
702.464.7001

David M. Spaulding
Shareholder
dspaulding@bhfs.com
303.223.1241

Cara R. Sterling
Shareholder
csterling@bhfs.com
303.223.1141

Nancy A. Strelau
Shareholder
nstrelau@bhfs.com
303.223.1151

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