

## Employee Benefits

# What COVID-19 Services Your Health Plan May Cover

**U**NDER TWO bills that were signed into law in March, health plans must cover testing, preventative services and vaccines for COVID-19 without cost-sharing.

The Families First Coronavirus Response Act requires that group health insurance and individual health insurance plans cover coronavirus testing with zero cost-sharing.

Services are covered whether or not they are in-person, telehealth-enabled, at an urgent care center, or in an emergency room.

That law was followed by the CARES Act, which requires group plans to cover preventative services and vaccines for COVID-19 without cost-sharing. The coverage applies both to the test itself and to the visit in which the test was administered.

### Telehealth services

The CARES Act greatly expands the availability of telehealth services beyond diagnosis and treatment for COVID-19 in order to expand access to care.

As part of the law, the Federal Communications Commission will receive \$200 million

to provide telecommunications and information services and devices.

Also, restrictions on health savings accounts have been waived to allow high-deductible health plans to cover telehealth services without a deductible.

The new law authorizes federally qualified health centers and rural health clinics to be sites for telehealth consultations, and it enhances payments for such telehealth services provided during the emergency period.

### Beware of treatment costs

While most private health plans likely cover most items and services needed to treat complications due to COVID-19, there is no clear federal requirement to do so.

The essential health benefits standard under the ACA defines categories of services to be covered, but it is left to states to designate “benchmark” policies that define specific covered services.

As a result, coverage for at least some services needed to treat COVID-19 – such as home-delivered care, telemedicine visits, or

respiratory therapy visits – are likely to vary under health insurance plans that are subject to the essential health benefits standard.

Nearly all private health plans use networks of participating hospitals, doctors, laboratories and other providers.

One issue that health plan enrollees have to watch out for is going out of network for coronavirus testing or care.

HMOs, for example, could deny claims for out-of-network services, other than emergency services. Under PPO plans that provide some coverage for out-of-network care, patients can face higher cost-sharing (e.g., patients might be required to pay 20% coinsurance for in-network claims and 50% coinsurance for out-of-network claims.)

In addition, out-of-network care exposes patients to “balance billing,” or the difference between the provider’s undiscounted charge and the amount the health plan considers reasonable.

If you are seeking care, make sure you are going to an in-network provider to avoid any undue surprises. ❖



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# Changes to Plans Must Be Communicated to Staff

**A** NUMBER OF plan sponsors have made changes to their group health plans in response to the COVID-19 pandemic, such as covering testing and sometimes treatment without any cost-sharing by the plan enrollee.

But any changes that are made to plans must be followed up by amending plan and commuting them to the plan enrollees.

Under the Employee Retirement Income Security Act, all health plans are required to deliver a Summary Plan Description (SPD) to enrollees to inform them of the full spectrum of coverage and their rights under the plan.

Whenever a plan sponsor makes a material modification to the terms of the plan or the information required to be in an SPD, they must amend the plan and let participants know about the change through a Summary of Material Modification (SMM).

### Material changes

To qualify as “material,” a change must be important to plan enrollees. Examples include adding or eliminating a benefit, changing insurance companies, or changing rules for dependent eligibility.

Plan changes related to the COVID-19 pandemic that would have to be included in the SMM and SPD could include:

- Offering continuing coverage to staff who would otherwise lose coverage due to a furlough, layoff or reduction of hours.
- Changing eligibility terms to allow workers who may not have been eligible for coverage before to secure coverage (this could include part-time workers).
- Covering a larger portion of an employee’s premium share.
- Adding an employee assistance program to provide counseling for employees who may be undergoing unusual stress.
- Adding telemedicine coverage.
- Using funds in health savings accounts (HSAs) and flexible spending accounts (FSAs) to purchase over-the-counter medications.
- Covering COVID-19 testing with no cost-sharing.
- Covering COVID-19 treatment without cost-sharing.

Some of the above changes are required by new laws and health plans must respond accordingly by changing their SMMs and SPDs. For example, the Families First Coronavirus Response Act requires that group health insurance and individual health insurance plans cover coronavirus testing with zero cost-sharing.

And the Coronavirus Aid, Recover and Economic Stabilization Act reverses an Affordable Care Act rule that barred policyholders from using funds in HSAs and FSAs to pay for over-the-counter medications.

When the plan sponsor adopts these changes, it must also amend its plan summaries.

And SMMs must be delivered to plan participants within 60 days after a change has been adopted. You can deliver the SMM by mail, e-mail or posting it on your company’s intranet site. It’s recommended at this time that you opt for e-mail delivery.

One of the issues that may come up with any changes implemented in response to the COVID-19 outbreak is that some of the changes may be temporary.

If that’s the case, the plan needs to include the termination date of any benefits that are adopted on a temporary basis.

However, if you don’t know how long the temporary benefits will be in effect, their temporary nature must be communicated in the SMM. Employers need to issue another SMM when the temporary benefit or coverage term ends.

### The takeaway

This is an unusual time and unusual times call for unusual measures. It’s unusual for changes to be made to a plan in the middle of a plan year but because of the way the pandemic crash-landed, many plan sponsors have had to make changes.

That said, you should work with us and your carrier on ensuring that the amended documents are sent out to staff.

As the employer you should be aware of all the changes that have been made in response to COVID-19 so you can discuss them with any employees that have concerns or questions. ❖



# Ten Employee Lawsuit Risks During Outbreak

**T**HE NOVEL coronavirus that broke out in the winter has caused immeasurable suffering, both physical and economic.

For employers struggling to stay in business, this is a fraught time where mistakes in managing their workforces could lead to employee lawsuits. Here are 10 potential trouble spots to watch for.

**1. Workplace safety** – Businesses that still have employees working on-site run the risk that a single infected worker may send the virus ripping through the entire workforce.

While workers' compensation laws may prevent employees from suing, their family members who become ill or suffer through a worker's illness face no such constraints.

**2. Sick time and paid leave** – Congress enacted the Families First Coronavirus Response Act in March, guaranteeing full-time employees of small businesses 80 hours of sick leave (part-timers get a prorated amount.)

Mistakes in administering these benefits could prompt lawsuits.

**3. Workplace discrimination** – Because the coronavirus originated in China, there have been reports of Asian-Americans being targets of racist actions. Employers must take care to avoid the appearance of making workplace decisions based even partly on employees' race.

**4. Americans with Disabilities Act** – The ADA prohibits discrimination against disabled individuals and requires employers to make reasonable accommodations for these workers.

Employees who become ill from COVID-19 (the illness caused by the virus) may suffer after-effects that include trouble breathing, speaking and working at their former pace. Employers must accommodate these workers to the extent that is practical.

**5. Wage and hour violations** – Non-exempt employees working remotely may be working more than their regular hours, missing rest and meal breaks, and using their own equipment.

Employers must keep careful records, reimburse employees for their use of personal equipment where warranted, and remind employees to take mandatory breaks.

**6. Battered retirement plans** – Stock markets have cratered since the beginning of the year, taking retirement account balances down with them.

Questions may be asked about whether fund managers did enough to limit the damage. Employees who are not satisfied with the answers may go to court.

**7. Health information privacy** – Employee health information privacy is protected by law. Employers must secure the records of infected employees from unauthorized access by individuals within and outside the company.

**8. Union contracts** – Collective bargaining agreements may contain provisions that go beyond federal requirements for breaks, paid leave, layoff notices, and workplace safety.

Employers must keep their CBAs in mind and work with their unions to avoid contract violations.

**9. Disparate impact from layoffs** – If layoffs are necessary, employers must take a thoughtful approach when deciding which employees to part company with.

An appearance of singling out older workers or other protected classes under discrimination laws could invite lawsuits.

**10. WARN Act** – The Workers Adjustment and Retraining Notification Act requires some employers to provide at least 60 days' notice before layoffs. Many businesses' revenues fell off the cliff so quickly that they were unable to provide that much notice.

## A final thought

The pandemic is a crisis that few businesses foresaw. The effects, including the litigation, may haunt them for a long time to come. ❖



## Some Insurers Step Up Group Health Plan Assistance

**S**OME HEALTH insurers are helping business workers in group plans maintain employee benefits during the COVID-19 pandemic, a new survey has found.

Social distancing and stay-at-home orders have put the hurt on hundreds of thousands of businesses across the country, which has forced them to reduce employees' hours, furlough them or lay them off.

Besides all those employees seeing their pay drastically curtailed or disappear altogether, it also affects their employee benefits, with health coverage topping the list.

With so many people concerned they may lose coverage and business owners equally worried about their employees, some insurers are stepping up by extending coverage for affected group plan participants.

The survey by insurance research organization LIMRA found that 42% of group health plans are automatically continuing coverage for all employees for a specified period of time, and another 22% are extending eligibility on a case-by-case basis to employees whose status has changed.

About 35% of insurance companies have adjusted reinstatement rules to make it easier for those affected by COVID-19 to regain coverage, and a similar number are extending the timeframe in which employees may elect to pay or continue coverage if separated from their employer.

Nearly all carriers in the survey said they are offering premium grace periods of 60 days on average to workers unable to pay their premiums due to COVID-19, while others plan to reassess or extend those timelines if needed.

These moves are important, considering that about 70% of all workers in the U.S. receive health coverage from their jobs, according to LIMRA.

### The typical scenario

When an employee is laid off or furloughed, their hours are essentially reduced to zero, which can result in a loss of eligibility to participate in their employer's group health plan.

Group health insurers will have written documents that outline the rules for particular plans. These rules include a definition of eligible employees, including how long an employee can be absent from work before they will lose eligibility for insurance coverage.

Health plan documents do not usually differentiate between an employee who is terminated, one who is laid off and one who is furloughed.

To be eligible under the typical plan's rules, an employee must work a minimum number of hours per week (usually at least 30). If an employee is under protected leave – such as Family Medical Leave Act protection – benefits continue during leave.

In other words, an employee who is not meeting the hours requirement or is not actively at work (work from home is considered actively at work) based on being terminated, furloughed or laid off – even temporarily – will generally have their benefits terminated. They should then receive an offer of COBRA or state continuation, unless state law does not require it due to an employer's size.

However, if an employee continues to remain eligible for the business's group health plan during an unpaid absence, the employer will need to determine how to handle their insurance premium payments.

### The takeaway

If you are concerned about benefits continuation for laid-off, furloughed or terminated employees, you can call us to see if your health plan has made any special arrangements during the COVID-19 outbreak.

We can check to see if there is any way to continue coverage for any affected employees, and for how long and at what cost to you. ❖

