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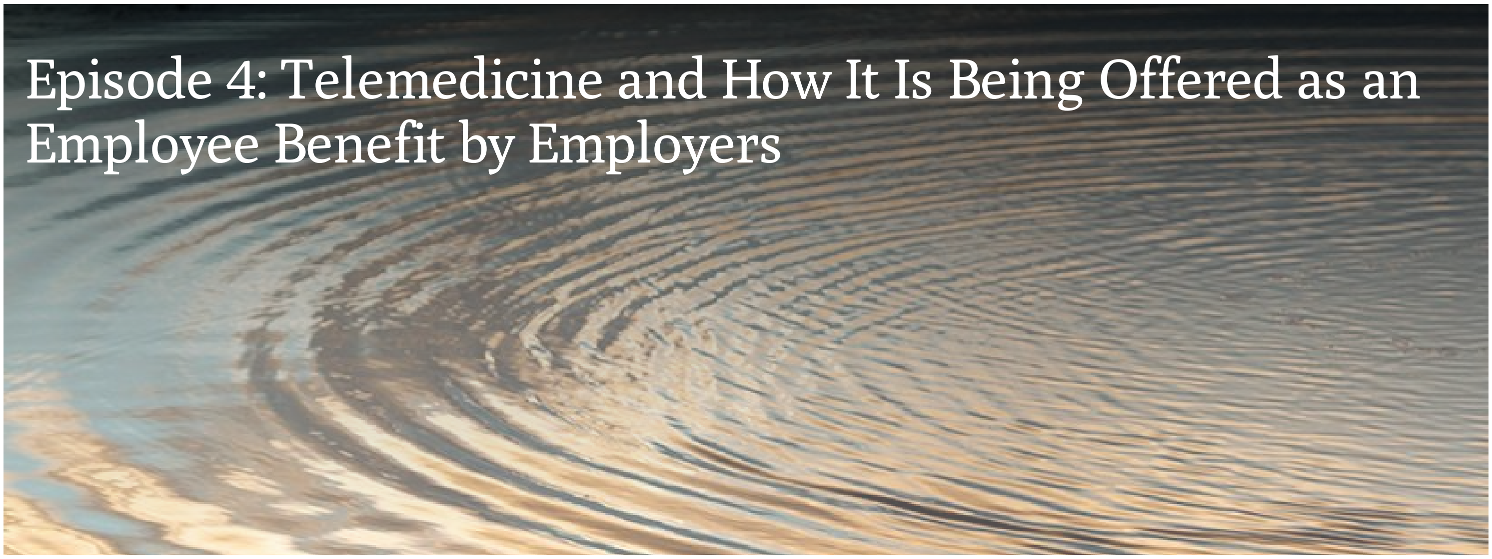

Episode 4: Telemedicine and How It Is Being Offered as an Employee Benefit by Employers

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Audio Transcript

Susan Nash: Welcome to Winston's Benefits Blast podcast. I'm Susan Nash and I'm joined today by Jamie Weyeneth. During this episode, we will be talking about telemedicine and how it's being offered as an employee benefit by employers.

Jamie Weyeneth: So Susan, what exactly is telemedicine?

Susan Nash: Jamie, telemedicine is the practice of medicine using electronic communication, information technology or other means where diagnosis and treatment are delivered remotely through use of technology. This is typically done through a video chat or a phone – often, on your iPhone, you can dial in through an app and call up a provider.

The scope of services can include nearly every medical specialty, from allergy, to immunology, to urology - obviously surgery would not be included in that list. But while the term telemedicine is used to refer to the delivery of medical care enabled by telecommunications technology, telehealth is more frequently the term that we use to describe the wider array of services that are being offered through these digital technologies such as telepharmacy or telebehavioral health services. What's really interesting about the telehealth is that it can also offer monitoring programs that allow patients to help prevent, manage or treat a broader array of symptoms such as diabetes management or mental health and behavioral health issues.

Jamie Weyeneth: Oh, okay. What are some of the reasons employers are adding telemedicine to their benefits offerings?

Susan Nash: We've heard a lot of clients that are interested in this benefit. According to a survey that was done by the National Business Group on Health and Towers Watson, by the year 2020, nearly all companies want to offer some form of telemedicine in their benefits offerings. These can be done for a variety of reasons. One is convenient access to care – obviously if you don't have to go sitting in a doctor's office and waiting for a long time that is a good advantage for how busy everyone is these days you can simply log into a website from any device or call a toll-free hotline and speak with a physician or another provider. Most of these telemedicine lines would include a live nurse who can answer questions and then also refer you over to other providers, if necessary. If there is an emergency, they would obviously refer you over to immediate care. But it's a great way, day or night, these are usually open 24/7; no matter where you are sitting whether you're on business, travel or at your house to be able to access care either at work or on vacation.

One thing that we're really finding is Millennials really like this benefit, there's not so much of an attachment to a primary care physician in an office setting. Millennials and younger working employees want to be able to have care at their convenience.

Another issue that we're seeing that employers are embracing telehealth initiatives with is better access to healthcare services. So if employees live in remote regions, there's not providers that are available to them, they don't live in a city or as I mentioned before, they might be on business travel, those are the types of situations where somebody might need to access care and they can't physically get to an office quickly.

Really the one that we find that's very attractive is the little or no wait time for medical services. Outside of emergency care, on average people spend probably 100 minutes or more with respect to an office visit which would include commuting, waiting, filling out forms to only see the doctor for about 20 minutes. So you can imagine if someone has to go do that during the work day, they could be gone for up to 2 hours. So these telemedicine appointments can happen immediately in some plans, and it can take place virtually in the convenience of a person's office or their house.

We're also finding that healthcare costs are reduced when employees use this service. It can be in the range of $50 to $75 for a telemedicine visit, whereas going to a primary care physician in an office setting might be closer to $150, and obviously visits to the ER are much higher than that. So it's really for consumers that have health care concerns. If you're going frequently to the doctor, this can really add up over time and for the health plan as well.

Jamie Weyeneth: Right, that would create savings both for the individual participants in terms of out of pocket costs, and also for the plan, itself, which is a win-win proposition. We've really seen a growing interest in telemedicine among our clients recently. One of the drawbacks, though, has been fairly low utilization. By providing access to a healthcare provider on the telephone or by an online link, employers are hoping employees and their relatives will avoid more expensive alternatives like in-person visits to doctors, hospital emergency rooms and urgent care. So far, however, we're seeing that relatively few employees have shown a willingness to use telemedicine services. According to a National Business Group on Health survey of large employers, while 96 percent of large employers are making—or plan to make—telemedicine services available to their employees, only about 8 to 10 percent of employees are actually using telemedicine services. Just anecdotally, we've heard from our clients who offer telemedicine services that participants who have used the services do like it, so the trick may be just getting plan participants to try telehealth for the first time.

Susan Nash: Yeah, I definitely see that as well, and I think that because of the growing interest in telemedicine and telehealth services, it's going to be only increasing as we move forward.

I think one of the thorny issues that we're discovering is legal compliance with a lot of the federal and state laws that apply to benefit plans such as ERISA. So, since most of these telemedicine benefits are funded by the employer and they offer medical services, they're likely going to be group health plans subject to ERISA and, therefore, to satisfy ERISA's reporting and disclosure requirements and ease COBRA administration, what a lot of our clients have been doing is wrapping the benefit into an existing medical plan as a participating benefit, and sometimes they'll even be provided through the third-party administrator that's also administering the medical plan.

One of the problems with this, though, is if the employer wants to offer telehealth services to all of its employees, even those that are not participating in the medical plan – and we see this quite frequently in the telemental health area, where they want to provide an app that's got not only mindfulness and meditation exercises, but you can also dial up a mental healthcare professional as well. In that case, you know, the benefit could be treated as a separate ERISA plan with separate COBRA administration, and if it's not integrated with the overall health plan that the employer provides, those can create some really thorny issues.

In addition, telehealth benefits could also be structured as part of an EAP, an Employee Assistance Program. So as I mentioned, we have seen a growing trend in offering mental health employee assistance-type benefits through the digital technologies, and in this case, you could actually add the telehealth benefit to the EAP services that are already being provided. There's an exception under both the ACA and some of the other federal requirements for EAP's. You just have to be careful that if you want to meet this exception, the program has to be sort of "toned down"; you can't offer significant medical benefits, and it can't be coordinated with benefits under another group health plan.

Another important point about that EAP exception is that employees can't be charged any premiums, contributions or cost sharing to participate, so another legal issue that you'll have to explore is how are employees being charged for the service and who's paying for the service, and we'll talk a little bit later about how that impacts other benefits employers are providing.

In fact, right now I think would be a great time to talk about that. A lot of our clients have high deductible health plans coupled with health savings accounts, so would there be any issues if you had a telehealth benefit coupled with an HSA?

Jamie Weyeneth: Unfortunately yes, Susan, there would be. Individuals are not eligible to contribute to an HSA or to have HSA contributions made on their behalf, if they're covered under anything called "disqualifying coverage," which is generally health coverage that reimburses for expenses before the high deductible health plan deductible is satisfied. There are exceptions for preventive care and for permitted types of insurance like per diem or a specific disease or a specific illness coverage, and there's also an exception for certain types of benefits like stand-alone dental and vision and certain EAPs, but in general, most telehealth benefits, especially not the ones that employees are looking at, will meet this exception.

So there are two ways to address that issue. First is by actually charging all employees who use the telehealth service what's considered a fair market charge for the services until the high deductible health plan is met. Another option is to charge differently for those individuals who contribute to a Health Savings Account, although that does tend to affect utilization if there are different costs depending on which plan you are in.

Susan Nash: Yeah, I have struggled a lot with that issue and trying to coordinate all the different benefits, that's definitely important. I've also seen a lot of issues with privacy concerns, trying to decide is this a group health plan?, who's providing the services? – can you talk a little about that?

Jamie Weyeneth: Yeah, absolutely. Telehealth benefits are subject to the HIPAA privacy and security rules, as well as a bevy of other state privacy laws. So employers are going to have to assess whether the telehealth benefit is a group health plan subject to HIPAA, and that would require the employer to enter into business associate agreements with the telehealth vendor, and employers will also have to decide whether the providers who are offering medical services have any other separate legal obligations under HIPAA or any of the applicable stringent state laws that apply to mental health records or the provision of services via electronic means or prescription drugs. So for example, many states require that providers obtain informed consent for patients before administering telehealth services.

Susan Nash: It's interesting that you mention the laws that are applicable to the providers, because in looking at these contracts there are a lot of doozy issues that have to be negotiated. It's a lot more complicated than your typical administrative services agreement. So when I'm looking at the contract, in addition to the HIPAA requirements and the business associate agreement, we're also trying to cover issues such as corporate practice of medicine. A lot of times these apps and digital technologies will be offered by a technology company, and they'll be partnering with medical providers, and so it's important to make sure that whoever is delivering the services is not practicing in the corporate form if that's prohibited by state law. We also want to make sure that all the providers under the arrangement are properly licensed since you're not really having these people always vetted through a network that you would know through a third party administrator.

And then there's literally a bevy of state telehealth and privacy laws that have to be complied with that are different in each state, and so that can be complicated, too. Some states actually restrict online prescribing of medication; there's additional insurance requirements. And then you have the usual contract terms that you want to cover off such as insurance, indemnification, data privacy and security and making sure that the employer is not responsible for the advice that's being given over the technology. So there's quite a bit to look at when you're reviewing those contracts.

Jamie Weyeneth: And that's one of the reasons it's sometimes a lot easier if you contract for telehealth services through your existing medical provider because they would take care of a lot of those thorny issues, and it's a lot easier to do it that way.

Susan Nash: Exactly, agreed.

Jamie Weyeneth: So, it looks like we have a lot of legal issues when we're looking at telemedicine as an employee benefit, so let's talk about some Winston takeaways.

Susan Nash: Sure, I think the first takeaway is to look at what services are being provided under the telehealth benefit, who's eligible for the services, and more importantly, who's paying for the services. As we mentioned earlier, if an employer is funding or paying for the benefit it's going to probably be subject to ERISA because these are medical benefits that we're talking about, and then that creates a whole host of issues that will then need to be analyzed by the plan sponsor in terms of how the benefit is going to be treated under ERISA. Will it be integrated with the medical plan offering, or is this something that the employer wants to make available to everyone? I usually see that in connection with the telemental health benefits, but it certainly is an issue that you need to explore. And then, of course, the other federal laws that we look at for benefits purposes such as COBRA, the Affordable Care Act and HIPAA – they all need to be addressed as well. It's kind of like a crossword puzzle once you figure out all the players.

Jamie Weyeneth: Great, and also, when designing a telehealth program, you should think about how telehealth benefits would impact your other health care benefits provided by the company. We mentioned earlier, if you offer a high deductible health plan with a Health Savings Account, you have to make sure that the HSA services are priced appropriately so that you don't inadvertently disqualify your employees from making and receiving HSA contributions. You also want to encourage plan participants to try telehealth, which is, again, a good financial advantage for them and for the plan by setting your out of pocket costs for those telehealth services so that they're an attractive alternative to in-person doctor visit or urgent care visit.

Susan Nash: And it's pretty fun. I tried using ours the other day, so I can vouch for the effectiveness of this.

Anyway, thanks so much, Jamie, this was really interesting and thanks to everyone for listening to another edition of our Benefits Blast podcasts. Make sure to stay tuned for future episodes for more insights on the latest legislative, regulatory and practical developments concerning employee benefits and executive compensation. And also remember that Winston has a blog on our website for updates on the latest legal developments in the employee benefits area.

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