WINSTON & STRAWN LLP

BLOG

COVID-19: How Is It Impacting Your Health Plan?

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Under the Families First Coronavirus Response Act (the "Act"), group health plans and health insurance issuers are required to cover certain diagnostic testing and related treatment in connection with COVID-19. This mandate applies to health plans of all sizes, including fully insured and self-insured group health plans, grandfathered health plans, individual health insurance, and specified public health care plans. These new coverage requirements are effective immediately, but only with respect to covered COVID-19 related items and services that are provided on or after March 18, 2020, and will remain in effect until the end of the public health emergency period related to COVID-19.

Medical Claims: Under the Act, health plans are required to provide full coverage for the following items and services with no out-of-pocket cost to the participant (including deductibles, copayments, and coinsurance) or requirements for prior authorization or other medical management requirements:

- Certain COVID-19 testing (specifically, in vitro diagnostic products for the detection of SARS-CoV-2 or the diagnosis of the virus that causes COVID-19 that are approved, cleared, or authorized by the FDA and the administration of such in vitro diagnostic products);
- Certain items and services furnished to a plan participant during a health care visit that results in an order for covered COVID-19 testing. Items or services can be delivered in person at an office visit, through a telehealth visit, at an urgent care center visit, or at an emergency room visit; and
- Coverage is required only to the extent that items or services provided during the visit relate to the furnishing or administration of the covered testing, or the evaluation of the individual to determine whether COVID-19 testing is needed.

Insurance carriers must absorb the costs of these COVID-19 tests and related services. Plan sponsors of insured group health plans should expect to see any increased liabilities relating to COVID-19 testing and services reflected in the premiums charged by the insurance carrier at the next renewal. For self-insured health plans, the plan sponsor and participating employers will effectively be required to pay for the cost of these services. The cost of the services will likely vary depending on where the services are performed (for example a telehealth visit versus an emergency room visit) and whether they are in-network or out-of-network. At this time, it is unclear whether a group health plan or health insurance issuer can limit free testing and treatment required by the Act to in-network

providers. Plan sponsors can check with their third-party administrators for more information on the cost of these services.

Health Savings Accounts: In Notice 2020-15 discussed in our prior blog, the IRS clarified that a High Deductible Health Plan (HDHP) can provide immediate benefits for medical care services and supplies to test for and treat COVID-19 without disqualifying the HDHP or the covered individual from making Health Savings Account (HSA) contributions. In addition, the IRS stated that vaccines continue to be considered preventive care for purposes of these rules. However, if your group health plan offers other services to participants, such as telemedicine visits for non-COVID-19 reasons with no out-of-pocket costs, this could jeopardize an individual's HSA eligibility. Under the HSA eligibility rules, waiving the cost of certain health services (for example, non-preventive services) before the HDHP deductible is met can disqualify an HSA-eligible individual from making tax-qualified contributions to his/her HSA.We understand the IRS is aware of this issue as it relates to telemedicine and is considering temporary relief. Moreover, COVID-19 legislation recently proposed by Senate Republicans includes a temporary exception from the HSA rules for telehealth services. Specifically, the Senate bill allows an HDHP to provide first-dollar telehealth coverage without jeopardizing HSA eligibility for plan years beginning on or before December 31, 2021.

If you have further questions, contact your Winston relationship attorney for more information or regarding your specific circumstances.

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