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COVID-Related Benefit Mandates: What is Still Required and What is Optional?

As group health plan sponsors head into 2022 and contemplate a third year of COVID-19 related medical claims, many are confused about what COVID-19 related expenses are required to be covered at 100% cost-sharing and for how long.

Diagnostic Testing

The Families First Coronavirus Response Act (FFCRA) requires health plans to cover individualized COVID-19 diagnostic tests and related items and services provided during such visits without participant cost-share through the duration of the federal public health emergency, which the Department of Health and Human Services has recently extended through at least January 16, 2022. The coverage includes FDA-approved COVID-19 diagnostic tests administered by an in or out-of-network health care provider. Note that coverage of a diagnostic visit must also include virtual visits. Testing required for employment purposes is not currently required to be covered.

Vaccines

Under the CARES Act, non-grandfathered group health plans must cover COVID-19 vaccines without cost-sharing. FAQs issued by the Department of Labor clarified that, effective January 5, 2021, plans were required to cover without cost-sharing any COVID-19 vaccine authorized under an Emergency Use Authorization (EUA) or approved under a Biologics License Application (BLA) by the FDA immediately upon the vaccine becoming authorized or approved. This coverage must be provided consistent with the scope of the EUA or BLA for the particular vaccine, including amendments allowing for the administration of an additional dose to certain

individuals, administration of booster doses, or the expansion of the age demographic for whom the vaccine is authorized or approved.

Treatment

Actual treatment of COVID-19 itself is not mandated. Some employers initially expanded the 100% cost-sharing provisions to treatment of the illness itself. However, given the broad availability of the vaccine, some of those same employers have now decided to terminate the more generous coverage provisions. We have advised employers, however, that they should not affirmatively exclude treatment altogether. In addition, because the wellness program exception to HIPAA's prohibition against discrimination based on a health factor applies only to premium discounts, rebates, and cost-sharing mechanisms, plans may not deny eligibility for benefits or coverage based on whether an individual obtains a COVID-19 vaccination.

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