Coronavirus Update

LOCKTON

March 11, 2020

IRS gives HSA-compatible plans green light to pay for COVID-19 services below the high deductible

The IRS announced today that a health savings account-compatible high-deductible health plan (HDHP) may pay, not only for COVID-19 *testing* and (when it becomes available) vaccinations, but also for "all medical care service received and items purchased … for *treatment* of COVID-19," before the plan's high deductible is satisfied. See the IRS announcement here.

That announcement quells concerns that such HDHPs might jeopardize their qualified status by paying for coronavirus testing or treatment below the deductible.

Today's ruling brings IRS policy in line with directives by some state insurance departments (New York, California and Washington, to name three) that health insurers cover coronavirus *testing* with no cost sharing. It also aligns with decisions voluntarily made by many other insurers to do the same. Some employers sponsoring HDHPs were concerned these actions by state regulators and insurers might threaten the ability of their employees to make HSA contributions.

The decision by the IRS to allow HDHPs to pay for *treatment* of COVID-19 below the high deductible opens the door for employees and their dependents to, among other things, receive diagnoses and treatment for the coronavirus via telemedicine portals, with no cost sharing required. Without today's relief the telemedicine provider would, we think, have had to collect the fair market value of the telemedicine visit from patients who had not yet met their high deductibles.

> ***Lockton comment:*** The Centers for Disease Control and Prevention and other public health officials have stressed the importance of relying upon telemedicine to prevent the spread of the virus in emergency rooms, urgent care centers, and primary care waiting and treatment rooms. Today's IRS announcement supports those public health initiatives.

Self-insured medical plan sponsors may also wish to waive cost-sharing requirements, at least for testing and vaccinations related to the coronavirus, even if they do not do so for any actual treatment. Some insurers who administer claims for self-insured plans intend to administer the plans that way unless the sponsors opt out, while others will administer claims that way only if the sponsors affirmatively opt in. Check with your claims administrator for its approach to this issue.

Some insurers and claims administrators appear to be waiving cost sharing for all telemedicine visits for a period, whether or not related to treatment of the coronavirus. Waiving cost sharing for telemedicine visits unrelated to the virus falls outside the IRS's relief announced today and, to the extent the patient has not yet met their high deductible, appears to threaten the qualified nature of the HDHP.

> ***Lockton comment:*** While the likelihood of IRS enforcement around this issue is remote, the issue exists. HDHP sponsors might wish to dialogue with their insurer or claims administrator if a blanket cost-sharing waiver for all telemedicine visits is in the works.

Some telemedicine vendors are encouraging employers to offer, at least for a while, a telemedicine benefit to *all* employees, even those not eligible for the major medical plan, to allow the employees to obtain telemedicine-based care for the coronavirus and perhaps other illnesses as well.

> ***Lockton comment:*** While we see the wisdom in such an initiative, the offer would create some compliance issues under ERISA (if the benefit is offered by an ERISA employer), COBRA (the benefit provides healthcare, and thus COBRA attaches) and Affordable Care Act (the ACA requires most healthcare benefits programs to provide the full array of ACA-mandated preventive care, and the telemedicine portal would not be able to do so). We think federal authorities will offer a relaxed enforcement environment related to some of these issues, but members can enforce some rights, such as their COBRA rights, in the courts.

COBRA coverage triggers a variety of challenges. For example, while shutting the telemedicine benefit down after several months would not be a COBRA-qualifying event, we think COBRA would have to be offered in the wake of a COBRA-qualifying event triggered while the program was in place. The employer would need to find a way to transition to a similar platform anyone buying telemedicine COBRA at the time the program is shuttered; the employer can't simply terminate the COBRA coverage while the employer is offering other group healthcare coverage.

For more information on and best practices related to addressing the coronavirus, please visit Lockton's Coronavirus Advisory Practice website.

Edward Fensholt, J.D.

Director of Compliance Services

Lockton Companies | 444 West 47th Street | Suite 900 | Kansas City | MO | 64112