



Coronavirus Update

April 20, 2020

Federal guidance provided on coronavirus-related benefits mandates

Federal authorities have weighed in on the scope and extent of coronavirus-related health coverage mandates imposed by the Families First Coronavirus Response Act and the Coronavirus Aid, Relief and Economic Stimulus (CARES) Act. The following questions and answers explain the guidance.

Who do these mandates apply to?

All medical plans, whether insured or self-insured, whether maintained by private, public or church employers, and whether grandfathered under the Affordable Care Act or nongrandfathered. However, plans that are considered "excepted benefits," like the typical health flexible spending account, are exempted, as are short-term, limited duration medical insurance, and retiree-only plans.

When do the mandates apply?

From the act's passage until the end of the COVID-19 emergency period. So, March 18 to June 16, unless the emergency period is extended.

What must be covered?

COVID-19 virus testing, whether approved by FDA or not (if not, the manufacturer must be seeking or intending to seek approval).

In addition, items and services furnished to an individual during healthcare provider office visits (both in-person visits and telehealth visits), urgent care center visits and emergency room visits that result in an order for a COVID-19 test. These items and services must be covered only to the extent they relate to the furnishing or administration of the test *or* to the evaluation of the individual and their need for a test.

For example: If the individual's attending provider determines that other tests (e.g., influenza tests, blood tests, etc.) should be performed during a visit to determine whether there is a need for a COVID-19 diagnostic test for the individual, and the visit results in an order for, or administration of, a COVID-19 test, the plan must provide coverage for the related tests as well.

Does the mandate include blood tests for the COVID-19 virus?

Yes. The mandate includes coverage of the "swab" test as well as serological tests.

Can the plan impose cost sharing?

No. The rules prohibit cost-sharing (application of deductibles, copayments or coinsurance), preauthorization and medical management requirements.

What about out-of-network providers?

Plans must cover these tests at out-of-network (OON) providers. Plan must pay as follows: If the plan does not have a negotiated rate with the provider, the plan must reimburse the provider an amount no less than the cash price for such service, as listed by the provider on a public internet website. Providers must disclose the cash price of a COVID-19 diagnostic test on the provider's public internet website.

There does not seem to be an exception for OON providers from the cost-sharing prohibition for the services covered by the mandates.

Can a plan indirectly pass the cost of COVID-19 virus testing and related services on to plan enrollees by increasing cost sharing for other services or by eliminating other benefits?

No.

These provider visits include telehealth visits. If a plan doesn't currently offer a telehealth portal, must it establish one?

No.

Do these changes cause a loss of grandfathered status? Will a loss of that status be triggered when the mandate sunsets?

No.

ERISA requires a variety of notice obligations, the most time-sensitive is the 60 days advance notice of changes affecting a summary of benefits and coverage (SBC). Won't that pose a problem?

No. It's possible these benefit enhancements won't require an amendment to an SBC, but even if they do, regulators say plans get a free pass from that advance notice requirement but should provide notice ASAP. If *that* notice obligation does not apply, ERISA plan sponsors should provide a summary of the change within

seven months after the close of the plan year, but by then the mandate will likely have lapsed. States sometimes prohibit insurers from changing plan design midyear, but federal regulators encourage states to allow these changes.

Edward Fensholt, J.D.

Compliance Services

Not legal advice: Nothing in this Alert should be construed as legal advice. Lockton may not be considered your legal counsel, and communications with Lockton's Compliance Services are not privileged under the attorney-client privilege.

© 2020 Lockton Companies
