

» 12/10/20 | 2020-02

## Revisiting Group Health Plan Mandates for the COVID-19 Vaccine and Testing

### Background

With a COVID-19 vaccine on the verge of initial distribution here in the United States, and the ongoing importance of COVID-19 testing in general, the role of an employer's group health plan remains a key topic for consideration during this phase of the pandemic. Earlier this year, in an effort to address numerous pandemic-related crises, Congress passed the Families First Coronavirus Response Act (FFCRA) and shortly thereafter, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). These laws require that group health plans cover certain COVID-19 related tests and services. In addition, group health plans subject to the preventive services mandate set forth in the Patient Protection and Affordable Care Act (ACA) must cover the COVID-19 vaccine and its administration without cost-sharing. We revisit and address these issues below.

### COVID-19 Testing and Related Services

The FFCRA and CARES Act generally require group health plans and health insurance carriers to cover a broad range of items and services related to COVID-19 testing. This requirement was effective March 18, 2020, and lasts for the duration of the pandemic-related emergency period, which remains ongoing until further notice from the Department of Health and Human Services (HHS). Group health plans must provide this coverage without any cost-sharing requirements (deductibles, copayments, and coinsurance), prior authorization, or other medical management requirements. This requirement extends to grandfathered plans, and to items and services furnished by both in-network and out-of-network providers. Plans that do not have negotiated rates with out-of-network providers must either pay the cash price listed on a public website or negotiate a lower rate.

**Types of tests that must be covered.** Under the mandate, group health plans must cover the following types of tests: in vitro diagnostic tests that are Federal Drug Administration (FDA)-approved, tests the developer has submitted (or intends to submit) under an FDA emergency use authorization, state validated tests, or any other test HHS determines appropriate.

**When testing must be covered.** COVID-19 testing is only covered without cost-sharing when "medically appropriate for the individual, as determined by the individual's attending healthcare provider." This includes the individual's primary physician and any attending licensed/authorized provider that makes an individualized clinical assessment. Note that COVID-19 testing performed for workplace health and safety and/or as part of an employer's return to work plan is not covered by this testing mandate.

**At-home testing.** The guidance provides that group health plans must cover certain at-home COVID-19 testing options without cost-sharing when ordered by an attending health care provider who has determined the test is medically appropriate.

**Coverage for multiple tests.** The requirement to provide COVID-19 tests without cost-sharing is not limited to any particular number of tests for an individual, provided that the tests are medically appropriate. While group health plans may not impose prior authorization or other medical management requirements to deny coverage for individuals who are tested multiple times, the guidance urges providers to consult CDC guidelines, as well as state and local health departments etc., in determining whether testing is appropriate.

**Balance billing protection.** Balance billing occurs when a provider bills a participant for the remaining cost of a service after the plan has paid the amount due under the terms of the plan. The FFCRA and CARES Act require that group health plans reimburse a provider of COVID-19 at either a negotiated rate or an amount that equals the cash price listed by the provider on a public website. Regardless, the amount the plan reimburses the provider constitutes payment in full for the test with no cost-sharing to the individual or other balance due, which protects individuals from balanced billing for these services. Note that state balance billing laws also continue to apply.

### COVID-19 Vaccine Coverage

Generally, the ACA requires all non-grandfathered group health plans to cover certain in-network preventive services without cost-sharing. Under the FFCRA and CARES Act, those requirements extend to the COVID-19 vaccine, and were expanded to cover COVID-19 vaccinations administered by out-of-network providers also at no cost-sharing to the participant. Notably, group health plans generally have at least one year before they must cover a newly issued preventive care service, but the CARES Act **shortens that timeframe to within 15 business days after relevant agencies designate the COVID-19 vaccine as preventive.**

Group health plans must cover not only the COVID-19 vaccine without cost-sharing, but also the administration of the vaccine. This requirement applies regardless of how that administration is billed, and regardless of whether the vaccine is administered in multiple doses. The Departments explicitly extend cost-sharing protections to instances where a third-party (such as the federal government) pays for the vaccine, meaning individuals should not have out-of-pocket costs for the administration of the vaccine regardless of who pays for the vaccine itself.

### Takeaways

The Departments have emphasized that they will enforce these COVID-19 related provisions, and even provide toll free numbers for participants in both private sector and public sector plans to call if they have concerns. Accordingly, employers and group health plan sponsors should review all applicable guidance, consult with insurance carriers and third party administrators as necessary, and confirm compliance with the COVID-19 testing and vaccine requirements. For a summary of these and other

FFCRA and CARES Act provisions impacting group health plans, see our piece [here](#). Please contact your Alliant representative with questions.

**Compliance Update is presented by the Compliance Practice Group of Alliant Employee Benefits**

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