MAPLE BROOKS Benefits & Consulting

THE RISK REPORT

February 2021 | Volume 5 | Issue 2

Consolidated Appropriations Act

Take Note of How New Law Affects Group Health Plans

THE NEWLY enacted Consolidated Appropriations Act, 2021 contains a number of provisions that will affect group health plans, with most changes aimed at helping insured workers with flexible spending accounts (FSAs), cost transparency and surprise billing.

Some of the provisions are permanent while others are slated to run through the anticipated end of the COVID-19 pandemic. Here's a look at the highlights that will affect employer-sponsored health benefits.

FSA carryover rules loosened

The law authorizes employers to amend their cafeteria plans and FSAs to either:

- Allow participating staff to carry over unused amounts from the 2020 plan year to the 2021 plan year (and from 2021 to 2022 as well), or
- Provide a 12-month period at the end of the 2020 and 2021 plan years.

Under existing law, employers can only allow employees to carry over $550 from one plan year to the next.

Finally, under the CAA, employees can change how much they set aside into their FSA mid-year (usually they can only change their contribution levels ahead of a new plan year).

In all of the above cases, employers must approve these changes and update them in their plan documents.

Health plan transparency

The CAA also bars "gag clauses," which bar health insurers from entering into contracts that restrict a plan from accessing and sharing certain information. This is effective as of Dec. 27, 2020.

The goal of these new rules is to increase transparency in pricing and quality information for health care consumers and plan sponsors.

Also, there are new requirements for health plan ID cards that they will need to include starting with the 2022 plan year.

REQUIRED ID CARD INFO*

- Deductibles that are applicable to their coverage
- Out-of-pocket maximum limits
- Phone number and website address that enrollees can access for assistance.

**Starting with 2022 plan year.*

The CAA also created the No Surprises Act, which will, starting with the 2022 plan year, cap a plan enrollee's cost-sharing obligations for out-of-network services to the plan's applicable in-network cost-sharing level for the following three categories of services:

- Emergency services performed by an out-of-network provider or facility, and post-stabilization care if the patient cannot be moved to an in-network facility;

See 'Change' on page 2

FSA FREEDOM: *The law allows employers leeway to free their FSA users to carry over any unused portion of their account from one year to the next.*

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Coronavirus

EEOC Issues Vaccination Guidelines for Employers

THE EQUAL Employment Opportunity Commission has affirmed that employers can mandate COVID-19 vaccines for employees, subject to some limitations.

The EEOC's updated guidance offers direction regarding employer-mandated vaccinations, accommodations for employees who cannot be vaccinated due to a disability or sincerely held religious belief, and certain implications of pre-vaccination medical screening questions under the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act.

Asking a patient pre-screening questions is a routine part of a vaccination. These questions may constitute a "medical examination" as defined by the ADA. An employer must be able to show that the inquiries are "job related and consistent with business necessity" and that an unvaccinated employee could pose a direct threat to the health of others in the workplace.

The guidance makes clear that administration of a COVID-19 vaccination to an employee itself does not constitute a medical examination for the purposes of the ADA.

Urging employees to get the vaccine voluntarily or requiring them to submit proof that a non-contracted third party (physician, pharmacist or public health center) administered it may be a better alternative with fewer legal complications.

Reasonable accommodations

Some employees may be unable to get the vaccine for health or disability reasons. Others may have sincere religious objections to getting inoculated. In both cases, employers must make reasonable accommodations for the employees. The law permits them to exclude these employees from the workplace only if no reasonable accommodation is possible.

Employers and employees might not agree on what "reasonable accommodation" means. For this reason, employers should consult with human resources experts and carry employment practices liability insurance. Expert advice will help avoid these kinds of conflicts, and the insurance will pay for legal defense and settlement of resulting employee lawsuits.

Requiring employees to get vaccinated will also have implications for the employer's obligations under state workers' compensation laws. On the positive side, a vaccinated workforce should reduce the employer's exposure to claims that an employee got the virus on the job.

On the negative side, some employees may experience adverse side effects.

Since the vaccine would be a job requirement, the employee could make a claim for workers' comp benefits due to the adverse reaction. In addition, the employer may have to pay the worker for the time spent getting vaccinated and for the cost of the injection.

What you can do

Employers can protect themselves by following these guidelines:

- Follow federal and local health guidelines for the vaccine.
- Vary the requirements depending on work conditions and locations, such as requiring vaccines for those who regularly interact with the public but making them optional for remote workers.
- Accommodate employees unable to get the vaccine or resistant to it, to the extent you reasonably can without endangering other employees or the public.
- Apply the requirements consistently to all employees.

No one wants to catch or spread this virus. Employers can help halt the spread by thoughtfully addressing the issue of vaccinating employees. v

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Change Plan Documents to Allow FSA Carryovers

- Non-emergency services performed by out-of-network providers at in-network facilities, including hospitals, surgical centers, labs, radiology facilities and imaging centers; and
- Air ambulance services provided by out-of-network providers.

The takeaway

What to do now: If you offer FSAs to your staff and want them to be able to carry over funds from 2020 to 2021, and next year as well, you will need to make those changes to your plan documents.

Employers that sponsor group health plans should review their agreements with their health insurers and ensure that their plan contractors include language indicating that the contract complies with the prohibition on gag clauses.

What to prepare for: Starting with the 2022 plan year, employers should check with us or their insurer to make sure that the transparency changes are reflected in their plan documents and that their employees' health plan cards also include the changes required by the new law.

Plans should also reflect the new rules created by the No Surprises Act. v

Compliance

Changes for 2021 Summary of Benefits and Coverage

THERE ARE new Summary of Benefits and Coverage notice requirements for health plans starting with the 2021 coverage year.

The requirements, released by the Department of Labor, have new model templates, new instructions and new information that affects the coverage examples which are required to be in SBC documents that employers with group health plans must distribute to their employees.

Under the Affordable Care Act, all non-grandfathered health plans are required to provide enrollees and prospective applicants an SBC, which is essentially a synopsis of the plan's coverage and benefits. It must be produced in a specific format, contain specific information, and be written in a way that is easily understood.

Here are the changes that were made to the SBC template for plans that started on or after Jan. 1:

Coverage examples

The coverage examples that appear on the last page of the document have been modified to reflect changes in the cost of medical services that occur over time due to inflation and other factors:

"Managing Joe's Type 2 diabetes" (diabetes example): The total amount of expenses incurred for "Joe" has decreased.

"Mia's simple fracture" (fracture example): The total amount of expenses incurred by "Mia," who visited the emergency room for a simple fracture, has increased.

"Peg is having a baby" (maternity example): The costs incurred during "Peg's" hospital stay have been changed to remove separate newborn charges. The deductible line of the example should now match "your deductible amount" (if applicable).

Minimum essential coverage

Under the entry for minimum essential coverage, the template has been revised to reflect the elimination of the individual mandate penalty, which was repealed effective Jan. 1, 2019.

The entry now indicates that individuals eligible for certain types of minimum essential coverage may not be eligible for a premium tax credit under the ACA marketplace.

Uniform glossary

The uniform glossary has been updated to remove references to the individual mandate penalty.

What to do

If you offer group health plans to your employees, you are a plan sponsor and thus required to distribute SBCs to staff who are eligible for coverage during open enrollment. The SBC must also be given to new hires within 90 days of hiring for mid-year enrollment.

If you don't have your latest SBC, you can contact us or your health insurer. The insurer is obligated to provide all covered employers with updated SBCs after the Department of Labor and the Department of Health and Human Services release changes to templates. v

Health Care Savings

Generics and Biosimilars the Key to Reducing Drug Spending

THE SOARING cost of new prescription drugs is becoming a major driver in overall health insurance price increases, and some of those drugs are so expensive that they are out of reach for the average patient.

When people can't afford the drugs their doctor prescribes for their ailments, it can result in either severe financial strain (even for those with insurance) or, if they can't buy the medication at all, serious consequences for their long-term health.

WHAT'S DRIVING PHARMACEUTICAL INFLATION

- High launch prices of new brand biologics and specialty drugs. Specialty drugs are often used to treat complex, chronic conditions, and are among the most expensive medicines on the market.
- Annual price increases of brand-name drugs that have no real competition.

While generic drugs are affordable for most people, brand-name drugs can cause serious financial pressure on the vast majority of us.

Meanwhile, per capita spending on brand-name drugs increased by 55% from 2015-2018 and their average cost hit $4,500 in 2018, according to a study by the American Association of Retired Persons.

According to the association's report, brand-name medicines account for 77% of all spending on prescription drugs.

The answer

One way to tackle these skyrocketing prices is to increase patient access to more affordable generic or biosimilar pharmaceuticals that are approved by the Food and Drug Administration.

Using generics and biosimilars has proven to be the top way to reduce the cost of medicine outlays. For example, generic drugs can often cost 80 to 85% less than brand-name drugs, according to an analysis by the FDA. That's usually the first option when trying to reduce a patient's spending.

That gets more difficult when no generics exist, which is often the case for new drugs which still have their patent.

That's where biosimilars come in. They can be affordable alternatives to expensive brand biologics, and more are coming to the market every year.

Between 2015 and 2020, the FDA approved 29 biosimilars.

The takeaway

The more biosimilars that come on the market, the less of a burden drug prices will be on those who need them most. And, as more biosimilars become available, fewer people will opt for abandoning their prescriptions at the pharmacy due to cost.

Also, when a doctor prescribes brand-name drugs, the patient should ask about generic alternatives. After all, 90% of the generics in the market cost less than $20 for insured patients. v