



Rewards Policy Insider 2022-9



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COVID-19 Public Health Emergency Extended Again

U.S. Secretary of Health and Human Services Xavier Becerra recently announced another 90-day extension

of the COVID-19 Public Health Emergency. For group health plans, the extension means mandates relating to coverage of COVID-19 testing and vaccinations will continue at least through mid-July.

Coverage Mandates

The Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act established certain mandates for group health plans regarding coverage of COVID-19 testing and vaccinations that will remain in effect until the COVID-19 Public Health Emergency ends.

In general, plans must cover COVID-19 tests and testing related services without any cost-sharing, prior authorization, or other medical management requirements. Since mid-January of this year, this requirement has extended to over-the-counter, at-home tests.

Additionally, plans must cover COVID-19 vaccines provided by out-of-network providers without cost-sharing. In general, plans must use the Medicare reimbursement rate for purposes of reimbursing out-of-network providers for the cost of administering the vaccine. The costs of the vaccine itself are still being paid by the federal government.

As noted, these mandates will remain in effect until the COVID-19 Public Health Emergency ends.

When will the COVID-19 Public Health Emergency End?

As discussed, Secretary Becerra extended the public health emergency for another 90 days effective April 16, 2022. That means the public health emergency is currently scheduled to remain in effect at least until July 15, 2022.

Whether Secretary Becerra will extend the public health emergency again or let it expire in mid-July is an open question. Some political pressure is building for both the public health emergency and the COVID-19 National Emergency to end. But there is more at stake than just these group health plan mandates. Also tied to the public health emergency are special rules for Medicare and Medicaid, as well as the validity of Emergency Use Authorizations issued by the Food and Drug Administration.

Secretary Becerra has indicated that he will give at least 60 days advance notice if he plans not to extend the public health emergency. That means a decision will need to be made in mid-May if he is not going to renew it in mid-July.

Note that the Public Health Emergency is different from the COVID-19 National Emergency, which is currently in effect through February 2023. The “outbreak period” relief for COBRA election and premium payment deadlines, among other ERISA requirements for group health plans, is tied to the National Emergency declaration.



Department of Health and Human Services (HHS) Issues Additional Guidance on Transparency in Coverage Implementation

Non-grandfathered group health plans are facing a July 1, 2022 deadline to publish machine-readable files regarding in-network negotiated rates and out-of-network allowed amounts and billed charges, pursuant to the Transparency in Coverage rule (TiC Final Rule). New agency guidance provides an enforcement safe harbor for plans that use “alternative reimbursement arrangements” that prevent them from disclosing specific dollar amounts for certain in-network items and services.

Guidance

The issue, according to the April 19 Frequently Asked Questions (FAQs), is that the TiC Final Rules require plans to publish all applicable in-network rates, which may include negotiated rates, underlying fee schedule rates, or derived amounts. These rates must be reflected in the in-network rate file as dollar amounts, but there are certain alternative reimbursement arrangements that may not generate a dollar amount until the item or service is actually provided.

Some contracts between plans and providers require plans to pay a percentage of billed charges, so there is no way to know what dollar amount the plan will be required to pay until a bill is generated. For contracts of this type, the FAQs provide the plan can report the in-network rate using the applicable percentage instead of a dollar amount.

More generally, if the alternative reimbursement arrangements are not supported by the schema, or additional information needs to be submitted to describe the nature of the negotiated rate, plans can use an open text field to provide a description of the formula, variables, methodology, or other information needed to understand the arrangement. This open text field option is available only if the schema does not otherwise support the alternative arrangement.

Also of Note

The special rules provided in the FAQs apply only with respect to the in-network file. The out-of-network file also needs to be published by July 1, 2022. A third machine readable file with prescription drug information has been deferred indefinitely while the agencies consider if it is still needed in light of new prescription drug reporting requirements enacted as part of the Consolidated Appropriations Act, 2021.

The full text of the FAQs is available [here](#).

Maryland Enacts Paid Family and Medical Leave (PFML) Law

With the enactment of the Time to Care Act of 2022, Maryland is the 10th state (plus the District of Columbia) to require employers to provide paid family and medical leave to their employees. The Maryland program will be funded with a payroll tax on employers and employees, but employers can opt out by offering a plan that meets the state's minimum requirements. The payroll tax will begin in 2023, and benefits will become available in 2025.

Overview

In general, the Maryland program will guarantee up to 12 weeks (or 24 weeks, in certain circumstances) of job-protected paid leave each year. There will be substantial overlap between eligibility for leave under the Maryland program and the criteria for federal Family and Medical Leave Act (FMLA) leave, but the standards will not be identical. For example, the Maryland program will use a more expansive definition of "family member" than the FMLA.

The wage replacement rate for the lowest income workers will be 90%, and the maximum weekly benefit will be \$1,000. The Consumer Price Index, as opposed to a wage index, will be used to adjust the \$1,000 cap annually for inflation.

As noted, the Maryland program will be funded with a payroll tax on employers and employees. The contribution amount, and the cost-sharing formula between employers and employees, will be set by the Maryland Secretary of Labor in 24-month intervals. The amount and allocation will be based on a bi-annual study to be conducted by the Secretary.

Employers with at least 15 employees will be subject to the Maryland program and the related payroll tax. The statute defines an employer as either a private-sector or governmental entity that employs at least one individual in Maryland. In other words, it appears that the 15-employee threshold is applied enterprise-wide and not just with respect to employees in Maryland. However, the Maryland program will only apply to employees who are working in Maryland.

Employers otherwise subject to the Maryland program will be able to opt-out by providing their own plans. In order to qualify, the plan will have to be approved by the Department of Labor, and it will have to meet or exceed "the rights, protections, and benefits" provided under the Maryland program. Employer opt-out plans can be self-insured, fully insured, or a combination.

Other Issues for Employers

If the employee's need for leave is foreseeable, employers can require up to 30 days advance written notice before the leave begins. If not foreseeable, the employee must give its employer notice as soon as practicable.

If the employee's leave also qualifies under the federal FMLA, then the PFML will run concurrently with FMLA leave. However, employees must exhaust any

other employer-provided leave that is not required by law before they can be eligible to receive any PFML benefits.

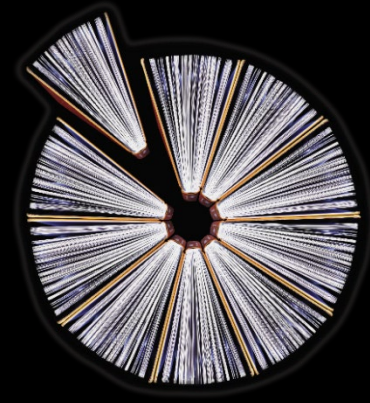
Additional details relating to program administration and employer and employee obligations will be provided in guidance to be issued by the Maryland Department of Labor.

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