HILL WARD HENDERSON

NEW FAQ PUBLISHED ON THE END OF THE COVID-19 EMERGENCY AND ITS IMPACT ON WELFARE PLAN RELIEF

April 11, 2023

With the COVID-19 public health and national emergency (the "National Emergency") expected to end on May 11, 2023, health plan sponsors have been questioning the impact on the various extensions and COVID-related coverage requirements implemented during the pandemic. On March 29, 2023, the Treasury Department, HHS and DOL jointly published a FAQ addressing the impact of the end of the National Emergency on these items. This client advisory briefly summarizes the guidance set forth in the FAQ. Text of the full FAQ can be **found here**.

COVID-19 Diagnostic Testing

The FAQ confirms that the requirement to cover COVID-19 diagnostic tests and certain associated items and services without imposing any cost-sharing requirements, prior authorization or other medical management requirements will cease to apply after the end of the National Emergency. However, the FAQ encourages plans to continue to provide such coverage without those limitations after the National Emergency ends. Notice to participants of a change in coverage may be necessary to the extent that the change is a material modification that affects the content of the plan summary of benefits and coverage (SBC), and the FAQ generally encourages plans to provide advance notice to participants of any testing coverage changes.

Rapid Coverage of Preventive Services and Vaccines for Coronavirus

The FAQ states that plans are required to continue to cover, without cost sharing, qualifying coronavirus preventive services, including, all COVID-19 vaccines within the scope of the Emergency Use Authorization or Biologics License Application for the particular vaccine and their administration after the end of the National Emergency. However, plans are not required to continue such coverage without cost sharing for these services provided by out-of-network providers.

Extension of Timeframes for ERISA-Governed Employee Benefit Plans

A number of benefit related deadlines, including COBRA coverage notice and election deadlines, ERISA claims and appeals filing deadlines, and HIPAA special enrollment deadlines, were previously tolled as a result of the COVID-19 pandemic. See our client advisory **here** for more details.

The FAQ announces that the extensions under this relief will end 60 days after the end of the COVID-19 National Emergency (i.e., July 10, 2023, assuming a May 11, 2023 end date). For purposes of applying the extensions, this is the end of the "Outbreak Period." The FAQ provides a number of examples as to the impact of this change on COBRA and HIPAA special enrollment periods that may be instructive to plan sponsors.

Medicaid and CHIP Coverage and Special Enrollment

During the National Emergency, state Medicaid agencies generally have not terminated the enrollment of any Medicaid beneficiary who was enrolled on or after March 18, 2020, through March 31, 2023. After March 31, 2023, those individuals no longer eligible for Medicaid or CHIP coverage may need to transition to an employer-sponsored group health plan or other medical coverage.

The HIPAA special enrollment rules generally permit an employee to request coverage under an employer group health plan within 60 days after termination of Medicaid or CHIP. However, the FAQ affirms that, due to the extension of HIPAA special enrollment rights during the National Emergency, those individuals who lose coverage as of March 31, 2023 (or any time before the end of the Outbreak Period) will have 60 days from the end of the Outbreak Period to enroll. Further, it encourages plans to consider offering a special enrollment opportunity that matches an even longer extension under the Health Insurance Marketplace rules.

Benefits for COVID-19 Testing and Treatment and HDHPs/HSAs

Prior guidance provided that a health plan that otherwise satisfied the requirements to be an HDHP will not fail to be an HDHP (and an individual enrolled in the HDHP will not cease to be eligible to contribute to an HSA) merely because it provides medical care services and items related to testing for and treatment of COVID-19 prior to satisfaction of the applicable minimum deductible.

The FAQ states that, until further guidance is issued, an individual covered by an HDHP that provides such COVID-19-related coverage prior to satisfaction of the applicable minimum deductible may continue to contribute to an HSA. Additionally, any future modification to the prior guidance on this matter will generally not require HDHPs to make changes in the middle of a plan year in order for covered individuals to remain eligible to contribute to an HSA.

If you have any questions or would like additional information, please contact a member of our Employee Benefits & Executive Compensation Practice Group.

Al Ward
al.ward@hwhlaw.com
813.222.8703

Kirsten Vignec
kirsten.vignec@hwhlaw.com
813.222.8731

Bret Hamlin
bret.hamlin@hwhlaw.com
813.222.8717

Tim Zehnder
timothy.zehnder@hwhlaw.com
813.222.3113

DISCLAIMER: This newsletter was created by Hill Ward Henderson for informational purposes only. It discusses legal developments and should not be regarded as legal advice for specific situations. Those who read this information should not act upon it without seeking legal advice. Neither prior results described herein, nor any other representations contained herein guarantee a similar outcome.

CONFIDENTIALITY NOTE: The information contained in this transmission may be privileged and confidential information, and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please immediately reply to the sender that you have received this communication in error and then delete it. Thank you.

Hill Ward Henderson | 101 East Kennedy Boulevard, Suite 3700, Tampa, FL 33602