

Group Health Plan Coverage of COVID-19 Immunizations

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As official approval from the Food and Drug Administration (FDA) is likely to be announced any day now for one or more vaccines, non-grandfathered group health plans must prepare to provide coverage for COVID-19 immunizations with no cost-sharing. Coverage with no cost-sharing must be available for both in-network and out-of-network providers within 15 days of such immunizations being recommended by the United States Preventive Services Task Force (USPSTF) or the Advisory Committee on Immunization Practices (ACIP). Grandfathered group health plans are encouraged, but not required, to provide this coverage as well.

Preventive Coverage Background

In general, non-grandfathered group health plans are required by the Affordable Care Act (ACA) to cover with no cost-sharing those items considered to be preventive (PHSA §2713). Plans must provide such coverage only for in-network providers, unless the preventive coverage is not available in-network, in which case coverage must be available with no cost-sharing for out-of-network providers. The list of preventive services required under the ACA includes:

- Evidenced-based items or services that have in effect a rating of "A" or "B" in the current recommendations of the USPSTF;
- Immunizations for routine use in children, adolescents, and adults that have in effect a recommendation from the ACIP of the Centers for Disease Control and Prevention (CDC);
- With respect to infants, children, and adolescents, evidence-informed preventive care and screenings provided for in guidelines supported by the Health Resources and Services Administration (HRSA); and
- With respect to women, evidence-informed preventive care and screening provided for in guidelines supported by HRSA, to the extent not already included in the current recommendations of the USPSTF.

This "list" is updated over time. As the agencies update their recommendations, plans must comply with plan years beginning after one year from the recommendation.

CARES Act Legislation

The CARES Act expands upon the preventive services requirement already in place under the ACA. The CARES Act requires coverage with no cost-sharing for any *"item, service, or immunization that is intended to prevent or mitigate coronavirus disease"* that: (i) has a rating of 'A' or 'B' in the current recommendations of the USPSTF; or (ii) is recommended by ACIP and adopted by the Director of the CDC, even if not listed for routine use on the CDC Immunization Schedules.

The legislation also updates the compliance time frame. The coverage with no cost-sharing must be provided within 15 days of a recommendation by the USPSTF or ACIP rather than a year later.

Interim Final Rule

Late in October, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS), Internal Revenue Service (IRS) and Department of Labor (DOL) released an interim final rule implementing the requirements set forth in the CARES Act. The rule makes it clear that coverage must include items and services that are integral to the furnishing of recommended preventive services, including the administration of COVID-19 immunizations. In other words, even if the federal government pays for some or all of the actual vaccine, the plan may still need to cover the administrative cost and/or office visit expense if applicable.

In addition, the rule clarifies that through the end of the current public health emergency, coverage must be provided without cost-sharing, regardless of whether an in-network or out-of-network provider delivers such services. The public health emergency was first declared early in 2020 by HHS. The public health emergency generally runs for 90 days unless extended. It has been extended multiple times and was most recently extended in October, extending it through the end of January 2021. It seems very possible that it will be extended again beyond January 2021.

Summary

It is expected that a recommendation will be provided by the USPSTF and/or ACIP soon after approval of any vaccinations by the FDA. It is also possible that the federal government will cover the cost of the vaccine, reducing the cost burden on plans solely to the administration of the vaccine. All non-grandfathered group health plans, both fully-insured and self-funded, should take steps now plans to ensure coverage will be provided with no cost-sharing; and grandfathered group health plans should consider their approach and prepare accordingly.

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