

## COVID-19 and Self-Insured Plans: Unexpected Issues

Certain states (including New York and California) are passing legislation that requires health insurers to provide novel coronavirus (COVID-19) testing without charge to insured members and to take other proactive steps to aid the coronavirus containment effort. The third-party administrators of self-insured plans (Aetna, Anthem, and Cigna among the largest) are being fairly aggressive in extending some of these same practices to the self-insured plans that they administer. More than one is rolling out first-dollar COVID-19 testing, expanded tele-medicine services, waiver of associated co-pays, etc. In most cases, these are being rolled out automatically unless an employer objects in writing by a specified deadline.

Being proactive against COVID-19 is obviously a good thing. However, some of these proposals can cause employers and self-insured plans to run afoul of certain technical legal requirements. For example:

- Waiver of cost-sharing on coverage for non-preventive treatment can disqualify a high-deductible health plan (HDHP), preventing enrollees from contributing to a Health Savings Account (HSA) and causing them to lose the tax benefits of a Limited-Purpose Flexible Spending Account (FSA) offered by the employer.
- Under the Affordable Care Act (ACA), if an employer offers a health plan, it must cover certain aspects without cost-sharing (e.g., preventive care) and meet other mandates. Extending tele-medicine to all employees regardless of whether they are enrolled in the employer's ACA-compliant coverage could create non-compliant coverage.

Based on informal conversations we have had with IRS contacts, we have reason to think that there will soon be favorable written guidance on some of these issues. For example, we are hopeful that the IRS can clarify that COVID-19 testing without cost-sharing is reasonably considered preventive care that can be provided without consequence to participants in a HDHP.

However, guidance may not be forthcoming on other aspects of these efforts. It may be worthwhile for a plan sponsor to take the opportunity to tweak the rollout in a way to minimize any associated legal exposures. Under many third-party administrator (TPA) agreements, employers – not the TPAs – are going to be responsible for exposure related to these types of plan design issues. For example, employers might consider narrowing the enhancements to temporary COVID-19 concerns, continuing co-pays for tele-medicine, carefully defining the population to which these measures are extended, tying the duration of the enhancements to the continuation of the COVID-19 epidemic, and similar efforts.

For specific questions related to your plan, please contact a member of IPB's [Benefits & Compensation team](#).