



LEGAL ADVICE FOR HEALTH PLANS

HEALTH LAW ALERT

November 6, 2020

Health Plans Must Cover COVID-19 Preventive Services Cost-Sharing Prohibited Whether in or out of Network

Today, the Departments of Health and Human Services, Labor, and the Treasury formally¹ (the “Departments”) published Interim Final Rules establishing requirements for coverage of vaccines and other preventive care for treatment of COVID-19, once the Center for Disease Control and Prevention’s Advisory Committee on Immunization Practices² (the “CDC ACIP”) recommends such treatment. Under the Interim Final Rules, health plans (other than grandfathered plans and plans offering short-term, limited duration coverage) must provide coverage for recommended COVID-19 preventive care, including vaccines. As with other recommended preventive care, health plans cannot impose out-of-pocket costs (deductibles, copayments, or coinsurance) on individuals who receive COVID-19 preventive care from *in-network* providers. While health plans may generally impose out-of-pocket costs for preventive care furnished by *out-of-network* providers, however, that is not the case for COVID-19 preventive care.

Coverage for COVID-19 preventive care must be effective within 15 business days of the date on which the CDC ACIP makes a recommendation concerning the care. Thus, unlike most regulatory requirements, the Interim Final Rule is not tied to the beginning of a health plan’s plan year. The requirement also “sunset” “after the expiration of the public health emergency” declared by the Secretary of Health and Human Service (“including any subsequent renewals” of the public health emergency).

The interim final rules are published at 85 *Federal Register* 71142 ([click here](#)). [Click here](#) for my compilation of Selected Federal Health Insurance Provisions incorporating the amendments into previously-published rules (or see the “Resources” page at tbixbylaw.com) (*see* the last two lines under “Compiled Rules”). The Interim Final Rule adds provisions to 45 C.F.R. § 147.130, beginning at page 120 of my Selected Federal Health Insurance Rules.

¹ The Rule was informally published when filed with the Office of the Federal Register on November 2.

² A recommendation from the United States Preventive Services Task Force or other entities named in the Affordable Care Act and its implementing regulations would also trigger the requirement.

Cost-Sharing; Payment of Out-of-Network Providers

Under the Affordable Care Act’s requirements for coverage of preventive care, health plans cannot impose cost-sharing requirements for preventive services furnished by in-network providers. Health plans are, however, generally permitted to impose cost-sharing for preventive care furnished by out-of-network providers. Nevertheless, the Interim Final Rules prohibit health plans from imposing cost sharing for COVID-19-related preventive care, whether the care is furnished by an in-network or an out-of-network provider. The Departments argue that this is necessary because, “participants, beneficiaries, and enrollees may not be able to locate in-network providers consistently during the emergency period.”

The Departments expressed concern that health plans might—

“reimburse out-of-network providers an unreasonably low amount for qualifying coronavirus preventive services, [which] could severely limit the number of such providers that are willing to provide the service [and] contravene the purpose of the requirement to provide out-of-network coverage without cost sharing of qualifying coronavirus preventive services.”

The Interim Final Rules therefore require health plans to “reimburse the provider for such service in an amount that is reasonable, as determined in comparison to prevailing market rates for such service.” The Departments explain that they will consider the amount that Medicare pays for a COVID-19 preventive item or service as being reasonable.

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