COVID-19 and Telemedicine Coverage

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Over the past several days, both the CDC as well as most insurance carriers have begun heavily promoting the use of telehealth services during the COVID-19 pandemic. Recognizing the importance that telehealth plays during this very disruptive time, carriers are encouraging virtual medicine utilization for care both related and not related to treatment of coronavirus, in an effort to decrease the spread of infectious disease.

All of the major carriers in our region – Aetna, United Healthcare, Cigna, Highmark BCBS and UPMC – are waiving member cost-sharing for telemedicine visits. For fully-insured plans, there is nothing you need to do to implement these changes. If you are a self-funded employer, you need to direct the carrier as to your desire to waive cost-sharing provisions. As you contemplate the coverage for your self-funded plan, you need to consider a few things if your plan is a Qualified High Deductible Health Plan.

According to **current** IRS regulations, if a qualified high deductible health plan waives the deductible for all telemedicine services, not just COVID-19 claims, at the point in which it makes this change it will cease to qualify as an HDHP under IRC section 223(c)(2). This means that employees will be prohibited from contributing to their Health Savings Accounts because the plan can no longer be treated as a Qualified High Deductible Health Plan. Ultimately, the employee is the one who would pay the price if this is discovered – if during an individual IRS tax audit it is uncovered the employee contributed to a HSA while covered by a non-qualified health plan, the employee ***could*** be subject to tax penalties (6% excise tax on any "excess contributions" made and potentially a 20% excise tax on "ineligible distributions").

In evaluating this scenario, it's noteworthy to consider the following:

- Most insurers have automatically made this change to their insured contracts, without giving fully-insured employers an option to opt out for their qualified HDHP's;
- The CDC is aggressively promoting telemedicine for everyone (including Medicare patients) during this crisis, and the message is to use telemedicine whenever possible;
- Employers can terminate this expanded benefit immediately upon expiration of the public order/pandemic once the crisis is over; and
- There are thousands of qualified HDHPs insured and non-insured that will be faced with this same non-compliance issue.

Additionally, this isn't an unprecedented situation with rapidly evolving issues. During implementation of the ACA, often the IRS and other regulators were doing "catch-up" on guidance.

As a result, while we can't advise self-funded employers that there is **currently** no risk in electing to expand telemedicine services, we believe the IRS will issue guidance soon including telehealth under its previous announcement exempting COVID-19 testing at no cost from traditional qualified plan rules. We believe the IRS is simply behind in issuing this announcement and that the intent of all government parties is aligned.

As always, in situations not yet addressed by the governing agency, you should consult counsel for further directions.