



National Compliance Update

USI EMPLOYEE BENEFITS

Updated December 17, 2020

COVID-19 Vaccine FAQs

The following frequently asked questions (“FAQs”) highlight the roll-out of COVID-19 vaccines approved by the Centers for Disease Control and Prevention (“CDC”) as it relates to group health plan coverage and employer compliance responsibilities.

GROUP HEALTH PLAN COVERAGE REQUIREMENTS

Q1. Are group health plans required to provide coverage for the COVID-19 vaccine?

All non-grandfathered group health plans must cover, without cost sharing, the COVID-19 vaccine no later than December 28, 2020.¹

Grandfathered plans are not required to cover the COVID-19 vaccine without cost-sharing but are encouraged to do so.

Q2. May a non-grandfathered group health plan impose cost-sharing on COVID-19 vaccine administration?

No. The group health plan must provide coverage for the COVID-19 vaccine to participants and beneficiaries without cost-sharing, both in-network and out-of-network.

Participants and beneficiaries who receive their COVID-19 vaccines through the group health plan should pay nothing (\$0). Providers are prohibited from balance billing patients for costs associated with the COVID-19 vaccine administration.

As it relates to out-of-network coverage for COVID-19 vaccine administration, the prohibition on cost-sharing applies during the Public Health Emergency Period for COVID-19.² Once this expires, a group health plan could implement cost-sharing when services are provided out-of-network.

¹ All non-grandfathered group health plans must cover, without cost sharing, the COVID-19 vaccine within 15 business days of the Advisory Committee on Immunization Practices’ (ACIP’s) approval recommendation and adoption by the CDC. On December 13, 2020, the CDC adopted ACIP’s recommendation. [Statement from CDC Director Robert. R. Redfield on Signing ACIP’s recommendation to use Pfizer’s COVID-19 vaccine in people 16 and older](#) (December 13, 2020).

² Currently expected to expire on January 21, 2021; however, an extension is likely.

Q3. How is the vaccine paid for?

The vaccine itself will be paid for by the federal government through funding authorized in the CARES Act.

The administration of the vaccine by a provider will be paid for by the group health plan (and other payers).

It is unknown how long the government will pay for the vaccine. Presumably, payers, including group health plans, will eventually be responsible for both the vaccine and administration costs.

Q4. What will the group health plan pay for administration of the COVID-19 vaccine?

When the COVID-19 vaccine is administered in-network, the plan will pay the negotiated rate.

When the COVID-19 vaccine is administered out-of-network, a group health plan must reimburse providers an amount that is reasonable, determined in comparison to prevailing market rates for such service. The amount that would be paid under Medicare is considered reasonable.

According to the Department of Health and Human Services (“HHS”), the Medicare payment rate for administering a COVID-19 vaccine is \$28.39 for a single dose. In cases where two or more doses are needed (the expectation for several of the vaccines), the initial rate of administration is \$16.94, and the final dose is \$28.39. These rates will be geographically adjusted.³

Q5. Our group health plan is being asked to choose how to cover the COVID-19 benefit – through the medical benefit, pharmacy benefit, or both. What does this mean?

Third-party administrators (“TPAs”) and pharmacy benefit managers (“PBMs”) for self-funded plans may be asking employers/plan sponsors to decide whether to pay for the vaccine through the medical benefit, the pharmacy benefit, or both.

Generally, if the COVID-19 vaccine is administered in a physician’s office, it is paid for through the medical benefit. Some vaccines, including the COVID-19 vaccine, can be administered by a trained pharmacist in a pharmacy. In this case, the administration costs would be billed under the pharmacy benefit.

While self-funded health plans may have the option to exclude coverage of the COVID-19 vaccine through their pharmacy benefit and direct all COVID-19 vaccines through the medical benefit, USI recommends expanding coverage to both the medical and pharmacy benefits, as permitted by your TPA and PBM.

³ <https://www.cms.gov/medicare/covid-19/medicare-covid-19-vaccine-shot-payment>

EMPLOYER CONSIDERATIONS

Following publication of this article, the EEOC updated their [COVID-19 guidance](#) on December 16, 2020 to include a new Section K addressing how the COVID-19 vaccination interacts with the legal requirements of the Americans with Disabilities Act (“ADA”), Title VII of the Civil Rights Act of 1964, and the Genetic Information Nondiscrimination Act (“GINA”). This new information is not captured in this article. Please see USI’s December 17, 2020 Compliance Update, “[EEOC COVID-19 Guidance Updated for Vaccines](#),” for further details on the EEOC guidance.

Q6. Can an employer require all employees to be vaccinated for COVID-19?

Employers looking at mandatory vaccination policies **should discuss the issue with counsel.**

EEOC has not addressed this issue as it relates to COVID-19 vaccinations. Such guidance is expected soon.

In [past guidance](#) related to flu shots,⁴ the EEOC recommends employers consider simply encouraging employees to get the influenza vaccine rather than requiring them to take it. That said, in this same guidance, a required vaccination policy may be permissible, unless:

- a disability prevents the employee from taking the vaccine (Americans with Disabilities Act); or
- an employee’s sincerely held religious belief, practice, or observance prevents him from taking the vaccine (Title VII of the Civil Rights Act); or
- an employee is pregnant and it is not advisable for her to take the vaccine (Pregnancy Discrimination Act).

In such circumstances, a reasonable accommodation or other exception may be required.

The Occupational Safety and Health Administration (“OSHA”) also has not yet provided guidance on COVID-19 vaccines. However, in a [2009 letter of interpretation](#), OSHA previously indicated that a seasonal flu vaccine could be required, subject to certain exceptions.⁵ OSHA emphasized that employees need to be properly informed of the benefits of the vaccinations. It went on to indicate that if employees refuse the vaccine due to a reasonable belief that they have a medical condition creating a real danger of serious illness or death (for example, a serious reaction to the vaccine), they may be protected as a whistleblower.

Another issue that should be considered is whether vaccines authorized under the FDA’s emergency authority (considered experimental) can be mandated.⁶

Further, there may be [state laws](#) or other agreements (e.g., collectively bargaining agreements) that may further limit the ability to compel vaccinations.

⁴ From Frequently Asked Question 13, “[Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#),” EEOC (March 21, 2020).

⁵ OSHA Interpretation letter (Nov. 9, 2009). <https://www.osha.gov/laws-regs/standardinterpretations/2009-11-09>

⁶ Statement from [Beth Bell](#), a member of the federal advisory panel on immunizations that will recommend to the CDC who should get the first doses. Johnson, Carolyn. “What you need to know about the Pfizer, Moderna and AstraZeneca vaccines.” *Washington Post* (November 17, 2020). From <https://www.washingtonpost.com/health/2020/11/17/covid-vaccines-what-you-need-to-know/>.

Finally, keep in mind that vaccine supply or availability may also be an issue. The announced roll-out process is targeted to certain groups (e.g., first responders, health care workers, nursing homes, and the elderly). Not all employees will have access to COVID-19 vaccines at the same time.

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