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National Public Health Emergency Extension Benefit Plan Impact

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On July 23, 2020, the Secretary of Health and Human Services (“HHS”), Alex Azar, declared the Public Health Emergency, scheduled to end on July 25, 2020, will once again be extended for an additional 90 days and as a result, numerous temporary benefit plan changes remain in effect.

Important Definitions

Emergency Period. HHS Secretary Azar issued a Public Health Emergency, beginning January 27, 2020. This Emergency Period is now set to expire October 23, 2020 (unless further extended or shortened by HHS).

Outbreak Period. The Outbreak Period runs from March 1, 2020 until 60 days after the announced end of the National Emergency which should likely mean no earlier than December 22, 2020.

While there are other temporary benefit plan provisions and changes that are now allowed due to the public health

emergency, summarized below are only those provisions directly impacted by the public health emergency extension.

Benefit Plan Changes in Effect Through the End of the Emergency Period

- **COVID-19 Testing.** All group health plans must cover COVID-19 tests and other services resulting in the order for a test without cost-sharing, prior authorization, or medical management and includes both traditional and non-traditional care settings in which a COVID-19 test is ordered or administered.
- **Excepted Benefits and COVID-19 Testing.** An Employee Assistance Program (“EAP”) will not be considered to provide significant medical benefits solely because it offers benefits for diagnosis and testing for COVID-19 during the Emergency Period and therefore, will be able to maintain status as an excepted benefit.

- **Expanded Telehealth and Remote Care Services.** Large employers (51 or more employees) with plan years that begin before the end of the Emergency Period may offer telehealth or other remote care services to employees (and their dependents) who are not eligible for other group health plan coverage offered by the employer.
- **Summary of Benefits and Coverage (“SBC”) Changes.** Group health plans may notify plan members of changes as soon as practicable and are not held to the 60-day advance notice requirement for changes affecting the SBC during the plan year or for the reversal of COVID-19 changes once the Emergency Period expires, provided the plan members are timely made aware of any increase and/or decrease in plan benefits summarized on the SBC.
- **Grandfathered plans.** If a grandfathered plan enhanced benefits related to COVID-19 for the duration of the Emergency Period (e.g. added telehealth or reduced or eliminated cost-sharing), the plan will not lose grandfathered status if the changes are later reversed when the Emergency Period expires.
- **HIPAA Special Enrollment.** 30 days (60 days for Medicaid/CHIP events) to request a special enrollment right due to loss of health coverage, marriage, birth adoption, or placement for adoption.
- **ERISA Claims Deadlines.** Timeframe to submit a claim and appeal of an adverse benefit determination. For non-grandfathered medical plans, timeframe to request external review and perfect an incomplete request.
 - This includes claim deadlines for a health FSA or HRA that occur during the Outbreak Period.
- **Fiduciary Relief of Certain Notification and Disclosure Deadlines for ERISA Plans.** A plan will not be in violation of ERISA for a failure to timely furnish a notice, disclosure, or document throughout the duration of the Outbreak Period if the plan and fiduciary operate in good faith and furnish the notice, disclosure, or document as soon as administratively practicable (which may include the use of electronic means such as email and text messages).

Benefit Plan Changes in Effect Through the end of the Outbreak Period

Group health plans, disability, and other employee welfare benefit plans will disregard the period from March 1, 2020 until the end of the Outbreak Period when determining the following:

- **COBRA.** Timeframe for the employer to provide a COBRA election notice; the 60-day election period for a qualified beneficiary to elect COBRA; the COBRA premium payment deadlines (45 days for

initial payment, 30-day grace period for ongoing payments); the deadline to notify the plan of qualifying events or disability determinations.

Employer Action

Employers should continue to adhere to the national pandemic-related benefit changes and expanded timeframe for providing COVID-19 coverage and other required plan notifications. State and local emergency measures may expire at different times and could impact employee benefit plans (such as insured group health plans) and other state and/or local programs (such as paid leave) differently than the timeframes required under federally regulated program requirements.