

April 19 - 21



NNAHRA
NATIONAL NATIVE AMERICAN HUMAN RESOURCES ASSOCIATION

25th Annual Conference

Honolulu, Hawaii

IS THE PANDEMIC OVER? LEGAL AND BENEFITS PERSPECTIVE

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AGENDA

- Overview of federal laws governing the COVID-19 pandemic
- Benefit Plans and COVID-19
- What is next?

OVERVIEW OF FEDERAL LAWS GOVERNING THE COVID-19 PANDEMIC



OSHA

- OSHA ETS- SCOTUS invalidated ETS as excessive use of authority by DOL, OSHA withdrew ETS on 1/26/22 but proceeded to draft permanent COVID-19 regulations. Noted states have the right to impose mandatory vaccination policies
- OSHA 300 LOG- Covid-19 exposures at workplace must be reported in log
- Employers must train staff on safety measures and follow cleaning protocols
- Employers not required to report adverse reactions to vaccines until May 2022, pending further guidance
- State OSHA requirements are not preempted by federal OSHA
 - COVID-19 written policies and procedures
 - Presumptions of work-related injury (CA,NJ)
 - Mandatory COVID-19 testing for unvaccinated or use of mask
 - Mandate use of PPE
 - Proof of vaccination for healthcare workers, restaurants, amusement parks/concerts/bars



CMS

- SCOTUS upheld CMS vaccination mandate allowing enforcement to proceed nationwide
- Requires Medicare or Medicaid providers and suppliers to comply with training and vaccination requirements
- Deadlines to comply with vaccination requirements vary by state
 - Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Utah, West Virginia, and Wyoming)- First shot **February 14, 2022**, and full vaccination by **March 15, 2022**.
- All other states must have complied with vaccination mandates no later than **January 27, 2022**, and full vaccination by **February 28, 2022**
- Allows for religious and medical disability exemptions per ADA
- Mandate applies to all employees working at a facility not only healthcare providers
- New FAQ available at [External FAQ IFC-6 - 2.3.22 - Update \(508 Compliant\) \(cms.gov\)](#)
- Applies to IHS/Tribal Health Programs (THP) and Urban Indian Organizations (UIO) that are Medicare certified facilities



FEDERAL CONTRACTORS

- President Biden issued an Executive Order on 9/21/21 mandating the Federal Workforce Task Force to issue guidance for federal contractors
- In October 2021 the Task Force issued guidance mandating that federal contractor and their subcontractors certify that their staff had been vaccinated against COVID by 1/18/22.
 - Requirement for all new federal contractors
 - Requirement for existing federal contractors
 - Several state agencies filed suit against the Biden Administration in GA. GA District Court issued national injunction
- 11th Circuit Court heard oral arguments in April on the legality of the vaccine mandate for federal contractors
- Decision on federal contractor mandate anticipated no later than May 2022



CDC- QUARANTINE AND ISOLATION GUIDELINES

Close Contact to confirmed COVID Case	Quarantine	Comments	Comments
Fully Vaccinated	<ul style="list-style-type: none"> Fully vaccinated with no booster quarantine for five days (<u>first day of quarantine is the day following the close contact</u>). For single-dose Johnson & Johnson vaccine (completing the primary series) over 2 months ago and have not received a booster shot quarantine for five days (as discussed above) 	<ul style="list-style-type: none"> Recommend get tested within five days of exposure. If positive for COVID follow isolation guidelines, if negative wear a mask for five additional days (return to work) and monitor symptoms 	Comments
Age 18 or older fully vaccinated with booster, children ages 5-17 fully vaccinated or individuals who tested positive for COVID within 90-days	<ul style="list-style-type: none"> No need to quarantine if asymptomatic, must wear a mask for 10 days following exposure. Get tested within 5 days of close contact 	<ul style="list-style-type: none"> If positive test proceed with isolation guidelines, if negative test and asymptomatic wear a mask for five additional days (return to work) 	<ul style="list-style-type: none"> Recommend get tested within five days of exposure. If positive for COVID follow isolation guidelines, if negative wear a mask for five additional days (return to work) and monitor symptoms
Unvaccinated or not fully vaccinated	<ul style="list-style-type: none"> Quarantine for five days (<u>first day is the day following the close contact</u>). 	<ul style="list-style-type: none"> Get tested within five days of exposure. If positive for COVID follow isolation guidelines, if negative and asymptomatic, wear a mask for five additional days (return to work) and monitor symptoms 	<ul style="list-style-type: none"> If positive test proceed with isolation guidelines, if negative test and asymptomatic wear a mask for five additional days (return to work)
Unvaccinated or not fully vaccinated	Unvaccinated or not fully vaccinated	<ul style="list-style-type: none"> Quarantine for five days (<u>first day is the day following the close contact</u>). 	<ul style="list-style-type: none"> Get tested within five days of exposure. If positive for COVID follow isolation guidelines, if negative and asymptomatic, wear a mask for five additional days (return to work) and monitor symptoms

CDC- QUARANTINE AND ISOLATION GUIDELINES

Test Positive for COVID or have symptoms of COVID	Isolation	Other Comments
Vaccinated	<ul style="list-style-type: none">Isolate for five days and wear a mask for five additional days, five days are counted from the date of the test result, or the day symptoms began.	<ul style="list-style-type: none">Isolation ends after 5 full days if fever-free for 24 hours without the use of fever-reducing medication and other symptoms have improved (Loss of taste and smell may persist for weeks or months after recovery and need not delay the end of isolation.If you continue to have fever or your other symptoms have not improved after 5 days of isolation, you should wait to end your isolation until you are fever-free for 24 hours without the use of fever-reducing medication and your other symptoms have improved.Suggest getting tested after day 5, if positive isolate for five additional days (total of 10). If negative return to work but wear a mask for 5 additional days.
Vaccinated and booster	<ul style="list-style-type: none">Isolate for five days and wear a mask for five additional days, five days are counted from the date of the test result, or the day symptoms began.	
Unvaccinated	<ul style="list-style-type: none">Isolate for five days and wear a mask for five additional days, five days are counted from the date of the test result, or the day symptoms began.	

HIPAA PRIVACY

- HHS released [FAQs](#) on the applicability of HIPAA Privacy Regulations and COVID-19 Vaccination Status
- HIPAA Privacy Rules do not prohibit an employer, school, business, venue or other entity from inquiring about an individual's vaccination status- these are not covered entities
- A covered entity and a business associate may require their workforce members to disclose to another employer or other parties the individual's vaccination status
- Certain covered entities are allowed to disclose the vaccination status of individuals as follows:
 - Pharmacies may disclose vaccination status to public health authorities;
 - Health plan may disclose an individual's vaccination status when required by law
 - Healthcare providers may disclose vaccination status to a health plan to pursue payment for the administration of a vaccine; to an employer for the employer to comply with OSHA contact tracing requirements as well as Workers'



BENEFIT PLANS AND COVID-19



COBRA

Timeframes to elect COBRA and pay for COBRA premiums was extended as a result of the pandemic. COBRA coverage can terminate for failure to pay premiums, but if COBRA QB pays past premiums coverage must be reinstated.

Timing	Regulations	COVID-19
Election	60 days	60 days following the end of the Outbreak Period (60 days plus 12 months)
Initial Payment	45 days	45 days following the end of the Outbreak Period (45 days plus 12 months)
Subsequent Payments	30 days	30 days following the end of the Outbreak Period (30 days plus 12 months)
Notify Plans of Qualifying Events	30 – 60 days generally depending on event	30 – 60 days following the end of the Outbreak Period (30-60 days plus 12 months)



HIPAA SPECIAL ENROLLMENT RIGHTS

Timeframes to report a loss of coverage under another group health plan or gaining a dependent were expanded during the pandemic.

Event	Regulations	COVID-19
Loss of Other Group Coverage	30 days	30 days following the end of the Outbreak Period (12 months plus 30 days)
Acquisition of a New Dependent (marriage, adoption or placement for adoption)	30 days	30 days following the end of the Outbreak Period (12 months plus 30 days)
Eligibility for State Assistance (CHIP)	60 days	60 days following the end of the Outbreak Period (12 months plus 60 days)



ERISA CLAIMS PROCEDURES

Timeframes to file and appeal claims were expanded as a result of the pandemic. Applies to commercial enterprises of the tribe.

Timing	Regulations	COVID-19
Initial Claim filing	12 months or as allowed by the plan	Outbreak period is not included in determining if the claim was filed on a timely basis
Appeal a Denied Claim	180 days of denial	Outbreak period is not included in determining if the claim was filed on a timely basis
External Review Determination	Four months after the notice of denial	Outbreak period is not included in determining if the claim was filed on a timely basis
Submit additional information to appeal a claim (external review)	Within the four months of the denial or 48-hours of notice being granted	Outbreak period is not included in determining if the claim was filed on a timely basis



CAFETERIA PLAN RULES

Concessions granted during the pandemic for Cafeteria and FSA plans sunset in 2022.

- Unlimited carryovers from one plan year to the next for health FSA plans and DCAP plans. Carryover limited to \$570 for 2022.
- DCAP annual election decrease for the 2022 calendar year to \$5,000 from \$10,500.
- Ability to add, drop or suspend participation mid-year without a family status change.
- Grace period to spend unused amounts reverts in 2022 back to 2 ½ months rather than 12 months (2020 to 2021 balances).
- DCAP unused funds forfeit rather than allowing employee to use funds for aging dependent children (2020 to 2021 expenses for a child that turn 13 in 2020 could be used in 2021)



COVID-19 BENEFIT MANDATES

Coverage of COVID-19 vaccines & testing

FAQ 50 establishes that any vaccine that receives FDA approval (*Emergency Use Authorization or Biologics License Application*) will be covered as of the date the vaccine is approved.

- Non-grandfathered group and individual health insurance issuers are required to cover qualifying coronavirus preventive services (*including vaccine and its administration*) as a preventive care expense at no cost to the participant, immediately after the date that the Advisory Committee on Immunization Practices (*ACIP*) or US Preventive Services Task Force (*USPSTF*) makes recommendation for the qualifying COVID-19 preventive service.

In-Network: Cover without cost-sharing

- At negotiated rates
- If a COVID-19 vaccine is not billed separately (*or is not tracked as individual encounter data separately*) from an office visit and the primary purpose of the office visit is the delivery of the COVID-19 vaccine, then the issuer may not impose cost-sharing requirements with respect to the office visit.
- **Out-of-Network: During the Public Health Emergency, cover without cost-sharing**

COVID-19 BENEFIT MANDATES

Coverage of COVID-19 Tests

- All plans are required to cover COVID-19 testing and screening at no cost to the participants in-network and out-of-network (for the duration of the declared pandemic)
 - Plans may not impose medical screening criteria to deny or impose cost sharing for testing on asymptomatic individuals, even if they did not have exposure to the virus (close contact to someone infected)
 - Plans are **not required** to cover testing for public health surveillance or employment purposes
 - Some states like CA require insured medical plans to cover COVID-19 testing for any reason including public health surveillance and employment purposes

Federal Government to Provide 4 Home Test Kits Per Household

- Effective January 19, 2022 families can request up to four rapid COVID-19 home tests kits at no cost from the federal government. Test kits can be requested ordered from: [COVIDTests.gov](https://www.covidtests.gov). Tests will be shipped via USPS (7-12 day shipping time)



COVID-19 BENEFIT MANDATES

Coverage of over-the-counter COVID-19 Home Test Kits

- **Effective Date:** January 15, 2022
- **Covered Plans:** Grandfathered and non-grandfathered medical plans in the group and the individual market (insured, self-insured and level funded medical plans).
- **Requirements:** Plan must cover the cost of FDA approved over-the-counter COVID-19 test kits at no cost to the participant (no co-payment, coinsurance or deductible applies)
 - No medical management requirements may apply (no need for a doctor's note or visit)
 - Covers up to 8 home test kits per month per covered participant (for reasons other than employment purposes or public health surveillance) due to close contact or COVID symptoms.
 - No monthly limit applies to home test kits ordered by a physician (unlimited)
 - In-network purchases of tests kits from approved providers must be covered at no cost while the declared emergency is in effect

Resources: <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-51.pdf> and <https://www.hubinternational.com/products/employee-benefits/compliance-bulletins/2022/01/at-home-covid-test-coverage/>



THANK YOU

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