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Proactive Coronavirus Strategies Employers, Make Sure Your Plans Don't Make Employees Sick

A widespread outbreak of any disease, such as the current coronavirus situation, can have far reaching consequences throughout our society and our workplaces. Health plans will play an important role in the education, protection, and treatment of employees. Likewise, a strong health plan design can minimize disruption of an employer's business.

Because information on the coronavirus is so new and rapidly changing, we will first summarize some of the key medical issues involved with coronavirus, before addressing education and plan design issues.

Background

The Centers for Disease Control and Prevention ("CDC") continue to closely monitor and report on the outbreak of a respiratory disease caused by a novel betacoronavirus named "SARS-CoV-2."¹ The illness caused by the coronavirus in humans was officially named "COVID-19" by the World Health Organization ("WHO") on February 11, 2020.²

Coronaviruses are part of a large family of viruses that are common among different species of animals such as: camels, cats, and bats. Rarely can animal coronaviruses infect people and then spread from person to person such as with SARs.³

¹ The CDC website can be found at www.cdc.gov.

² CDC, *Coronavirus Disease 2019 (COVID-19) Situation Summary*, <https://www.cdc.gov/coronavirus/2019-ncov/summary.html>, March 12, 2020, accessed March 12, 2020.

³ CDC, *Coronavirus Disease 2019 (COVID-19) Situation Summary*.



COVID-19 was first detected in December 2019 in Wuhan City, China. Many of the early patients had some sort of connection to a large live animal and seafood market, which indicated that it may have initially been spread from animal-to-person. The vast majority of illnesses have since been associated with travel from Wuhan City.⁴

Since COVID-19 was first detected, the infection has become widespread across the globe with the number of reported cases rapidly increasing each day. In response, the CDC continues to update travel bans to include countries with outbreaks.⁵ On March 11, 2020 the World Health Organization characterized COVID-19 as a pandemic.⁶

Prevention and Protection

Since COVID-19 is such a new coronavirus, no preventative vaccine exists at this time. The only real way to prevent contracting the virus is to take proactive measures to avoid being exposed to it.

Transmission of the coronavirus is similar to that of influenza. It is spread by close contact, about six feet, with an infected person who coughs or sneezes, passing on respiratory pathogens. It is currently unclear as to whether or not someone can contract COVID-19 simply by touching a surface or object that has the virus on it and then touching their own eyes, nose, or mouth.⁷ Infected persons are considered to be most contagious while they are most symptomatic.

Everyday preventive steps that can be taken to prevent the spread of disease includes:

- Cover your cough or sneeze with a tissue and then throw it in the trash;
- Clean and disinfect frequently touched objects and surfaces; and
- Wash your hands often with soap and water for at least 20 seconds (especially after going to the bathroom, before eating, and after coughing or sneezing).⁸

It is not necessary for healthy people to wear facemasks to protect themselves from COVID-19; however, facemasks should be used by people who show symptoms of respiratory disease to help prevent spreading to others.

⁴ CDC, *Coronavirus Disease 2019 (COVID-19) Situation Summary*.

⁵ CDC, *Coronavirus Disease 2019 (COVID-19) Travel Information*, <https://www.cdc.gov/coronavirus/2019-ncov/travelers/index.html>, March 12, 2020, accessed March 12, 2020.

⁶ CDC, *Coronavirus Disease 2019 (COVID-19) Situation Summary*.

⁷ CDC, *How COVID-19 Spreads*, <https://www.cdc.gov/coronavirus/2019-ncov/about/transmission.html>, March 4, 2020, accessed March 12, 2020.

⁸ CDC, *Steps to Prevent Illness*, <https://www.cdc.gov/coronavirus/2019-ncov/about/prevention-treatment.html>, March 10, 2020, accessed March 12, 2020.

Diagnosis and Treatment

Diagnostic testing for the SARS-CoV-2 virus includes collecting respiratory specimens with oral and nasal swabs.⁹ Symptoms of confirmed COVID-19 include fever, cough, and shortness of breath. They can range in presentation from mild to severe illness, and even death.

The CDC has provided clinicians with priority factors to consider in determining whether to test a symptomatic individual for COVID-19. Priorities for testing include:

- Hospitalized patients who have signs and symptoms compatible with COVID-19 in order to inform decisions related to infection control;
- Other symptomatic individuals such as, older adults and individuals with chronic medical conditions and/or an immunocompromised state that may put them at higher risk for poor outcomes (e.g., diabetes, heart disease, receiving immunosuppressive medications, chronic lung disease, chronic kidney disease); and
- Any persons including healthcare personnel, who within 14 days of symptom onset had close contact with a suspect or laboratory-confirmed COVID-19 patient, or who have a history of travel from affected geographic areas⁵ (see below) within 14 days of their symptom onset.¹⁰

While there are no specific antiviral treatments available for someone infected with COVID-19 at this time, efforts to develop a vaccine are underway. The care that can be administered to an infected person is only supportive in nature.¹¹

Misinformation

When there is a crisis, there will be hucksters. Naturopath, Dr. Sherrill Selman, was a guest on televangelist Jim Bakker's show that aired on February 12, 2020. During the broadcast, she and Bakker discussed a product called "Silver Solution," which Selman claimed had been tested on other strands of the coronavirus and that it can "eliminate it from the human body within 12

⁹ CDC, *Recommendations for Reporting, Testing, and Specimen Collection*, <https://www.cdc.gov/coronavirus/2019-nCoV/hcp/clinical-criteria.html>, Feb. 28, 2020, accessed March 12, 2020.

¹⁰ CDC, *Evaluating and Testing Persons for Coronavirus Disease 2019 (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-nCoV/hcp/clinical-criteria.html>, March 9, 2020, accessed March 12, 2020.

¹¹ CDC, *Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>, March 7, 2020, accessed March 12, 2020.

hours.”¹² She further surmised that it would be an effective treatment for the current outbreak of the coronavirus. Silver Solution can be purchased on Bakker’s website anywhere from \$40-\$300 depending on the amount and product type purchased.

Selman’s statement is in direct contradiction with the information that has been released by the CDC, WHO, and public health officials, which is that there is currently no viable treatment or vaccine available for COVID-19 at this time. Unfortunately, along with the panic of a pandemic, comes an opportunity for gimmicks and misinformation.

Guidance for Employers

The CDC has released guidance for employers in responding to the coronavirus.¹³ This guidance was intended to aid businesses in preventing exposures, encourage planning, and preparedness, as well as detecting infection. Recommended strategies for employers to use are to:

- Actively encourage sick employees to stay home until they are free of fever;
- Separate employees who arrive at work sick or become sick during the day, and send them home immediately;
- Emphasize respiratory etiquette and hand hygiene by all employees by utilizing posters, and providing tissues and no-touch disposals;
- Perform routine environmental cleaning (especially places like doorknobs and handles);
- Advise employees to take certain precautionary steps before traveling (such as checking the CDC Traveler’s Health Notices); and
- Take additional measures in response to the sporadic importations of COVID-19 (e.g., notify their supervisor if they have a sick family member at home).¹⁴

In addition to these strategies, it is important for employers not to make any risk determinations based on race or country of origin, as well as maintain confidentiality.

¹² Newsweek, *Televangelist Sells \$125 Silver Solution as Cure for Coronavirus*, <https://www.newsweek.com/televangelist-show-guest-promotes-silver-solution-cure-coronavirus-1487069>, Feb. 12, 2020, accessed March 12, 2020.

¹³ CDC, *Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019*, <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>, Feb. 26, 2020, accessed March 12, 2020.

¹⁴ CDC, *Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019*.

IRS Responds with Relief for High Deductible Health Plans

As background, an individual is only eligible to establish and contribute to a health savings account (“HSA”) if covered under a high deductible health plan (“HDHP”) and is not enrolled in any other disqualifying coverage. Disqualifying coverage includes benefits that offer “first dollar coverage” before an individual meets their minimum deductible under a HDHP, such as: general purpose FSAs, Medicare, and certain telemedicine programs. Such benefits would disqualify an individual from being able to make or receive tax-free contributions to their HSA.

In response to this public health emergency, on March 11, 2020, the Internal Revenue Service (“IRS”) issued Notice 2020-15 entitled, “High Deductible Health Plans and Expenses Related to COVID-19.”¹⁵

Notice 2020-15 states that in order to help eliminate barriers for testing and treatment of COVID-19, the IRS has determined that until further guidance is issued, a health plan which otherwise satisfies the HDHP requirements under IRC Section 223(c)(2)(A), will not fail to be a HDHP simply because the plan provides medical care related to COVID-19 prior to the individual meeting their deductible.¹⁶

Therefore, individuals covered under an HDHP providing free or reduced cost medical care related to COVID-19 prior to satisfying the deductible will not fail to be HSA eligible individuals.¹⁷

DOL Guidance on COVID-19 and the Family Medical Leave Act

The DOL has released guidance to employers to help them navigate the complexities of managing employee leave in the wake of a pandemic.¹⁸ The FAQ provides answers to pertinent employer questions as it relates to granting paid/unpaid leave to employees who are sick or caring for a family member that is sick, and returning to work under the Family Medical Leave Act (“FMLA”).

As a reminder, the FMLA requires covered employers to provide unpaid, job protected leave to employees for specific family and medical reasons, which may include being infected with COVID-19. An employee is eligible for protected leave under the FMLA if:

- They work for a covered employer;
- They have worked for their employer for at least 12 months;

¹⁵ IRS, *High Deductible Health Plans and Expenses Related to COVID-19*, <https://www.irs.gov/pub/irs-drop/n-20-15.pdf>, March 11, 2020, accessed March 12, 2020.

¹⁶ IRC Section 223(c)(2)(A).

¹⁷ IRC Section 223(c)(1).

¹⁸ DOL, *COVID-19 or Other Public Health Emergencies and the Family Medical Leave Act Questions and Answers*, <https://www.dol.gov/agencies/whd/fmla/pandemic>, accessed March 12, 2020.

- They have at least 1,250 hours of service over the previous 12 months; and
- They work at a location where at least 50 employees are employed by the employer within 75 miles.

Employers will want to review their leave policies and consider communication to employees reminding them of leave policies, including FMLA, as an integral step in managing the outbreak of COVID-19, as it enters the workplace.

Education and Health Plan Design

As fear of this outbreak becomes part of our national discussion, many participants may ask how your company and health plan will address claims related to the coronavirus. In addition to the guidance provided by the CDC, IRS, and the DOL, we recommend that employers take the following steps:

- Review your plan so you have a ready and accurate answer. Addressing this current need assures your readiness in the event of any future pandemic.
- Consider making changes to company policies to ensure flexibility and that they are consistent with public health guidance. Some policy changes might include:
 - Increase sick days/leave to encourage and allow employees who are sick, or who have a sick family member, to stay home;
 - Not requiring employees to use their PTO when sick;
 - Cancelling all non-essential travel for work;
 - Cancelling all in-person meetings unless necessary and mandatory; and
 - Encouraging remote work to minimize exposure.
- Begin the education of your workforce on protection, detection, and treatment of coronavirus. This process might be conducted through your wellness program or health plan.
- Consider changes to your plan design to reduce the financial implications of a pandemic on your participants and to avoid disruption of your business.
 - To assure participant awareness and access to health care, consider reducing or eliminating copays, coinsurance, and deductibles for

prevention, detection, and treatment (office visits, lab work, or prescription drugs).

Note: This would not be considered a reduction in benefits necessitating the distribution of a Summary of Material Modification. However, plan administrators should follow-up with counsel regarding all plan design changes.

- Design consumer driven health plans, such as HSAs, carefully so as not to run afoul of governing rules.
- Make employees aware of your action plan by sending out a company-wide communication informing employees and participants of policy and health plan changes being made in response to the coronavirus outbreak.

Having strategic protocols in place ahead of time will reduce anxiety and confusion in the workplace. Employers have many options available, but should consider the value of education, protection, and plan design in assuring employee wellness and the good will that accompanies preparedness. Please let us know if we can assist you in this process.

The content herein is provided for educational and informational purposes only and does not contain legal advice. Please contact our office if you have any questions about compliance requirements applicable to your employee benefit plans or other HR compliance matters.

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