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EMPLOYER READINESS – COVID-19 VACCINE

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As the Centers for Disease Control continues to roll out the new COVID-19 vaccines, there are several issues employers should be thinking about as they determine what steps, if any, they intend to take to provide or require vaccination of their employees. This article will provide guidance on benefit issues to consider as your business prepares your processes and procedures related to your employees. This topic is dynamic, and you will note that there are several questions without clear answers at this time. We are keeping abreast with what's happening and will publish updates as needed.

BACKGROUND

There are multiple manufacturers of vaccines, with Pfizer being the first to receive the emergency use authorization. Theirs and Moderna's are currently being distributed. There are several other companies with effective vaccines that will likely be approved over the next few weeks or months.

These two vaccines must be administered in two doses within 21 to 28 days to be most effective, depending on the manufacturer. According to the Food and Drug Administration, the second dose increases the level of protection from 52% to 95%, and traditionally provides longer lasting immunity than a single one. The two doses must be from the same manufacturer.

Some vaccines in development would only require a single dose, with an estimated approval sometime after January 2021. One challenge with the Pfizer vaccine is that it must be stored at ultra-cold temperatures. This is not the case with those of the other manufacturers.

WHO GETS THE VACCINE?

Each state will be provided with a limited number of units of the vaccine, and each has created their own guidelines about who will receive the first doses. Distribution has been broken down into phases, with the commencement of Phase 1a currently occurring. In Washington state, the vaccines will be provided as laid out by the CDC in three stages of Phase 1 (a, b, and c). Since the distribution is up to each state, you may see the distribution priorities slightly differ from state to state.

In Phase 1a, the limited supply of vaccines will be available for high-risk healthcare workers, highest risk first responders, and residents and staff of long-term care facilities. It will take several weeks for each state to have enough doses to vaccinate everyone in Phase 1a. After this group, the population to be vaccinated in the next phase varies across states. Washington calls for anyone over age 65, or over age 50 in multigenerational households. Then it's essential workers (grocery, teaching, food processing, transit, etc.) over age 50. In Oregon,

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teachers and older residents will be a priority. The CDC did provide some updated guidance prioritizing those over age 65 and essential workers, so there may be some adjustments based on that.

It does not appear that vaccinating all in Phase 1 will be completed until sometime after the first quarter of 2021, and with limited supplies of the vaccine, it could be even later. That means that the vaccine likely won't be available to the general population until late spring or early summer 2021.

CAN AN EMPLOYER REQUIRE EMPLOYEES TO BE VACCINATED AS A CONDITION OF EMPLOYMENT?

Yes, they can. Obviously, the decision to vaccinate or not will be up to individuals, but employers will have the option to require that their employees receive both doses as a condition of employment. In mid-December, the EEOC published guidance on this issue. They stopped short of explicitly saying that you can mandate vaccination, but the guidance allowed that, in general, you can require it. The EEOC does discuss the need for a reasonable accommodation for employees who are not able to receive the vaccine because of sincerely held religious beliefs or ADA protected health issues (pregnant people, for example). At this time, it is unclear what the reasonable accommodation would be. Other considerations for mandatory vaccinations would be any workers' compensation issues from side effects, and your ability to provide reasonable accommodation for those who are not able to get vaccinated. Some states are considering laws that would ban an employer from requiring the vaccine (Idaho, for example).

With the goal to get past the COVID-19 pandemic and back to a more normal social and economic time, Dr. Anthony Fauci has stated that we need between 75% and

80% of Americans to receive the vaccine. When the vaccine is widely available, we may see incentives or mandates from employers depending on acceptance by the general population.

EMPLOYER CONSIDERATIONS

Access and administration sites

When will the vaccine be available to your employees and where can they get one? During Phase 1, administration sites may be limited to the setting that can most easily reach the target population while meeting the vaccine's requirements for storage and handling. After Phase 1a is completed, we expect an expanded administration network to disseminate the vaccine to essential workers and then those at higher risk. This will include pharmacies, provider's locations, mobile units, etc. Worksite administration likely won't be possible until the vaccine is more available and can be provided to the population as a whole.

Side effects

Once your employees have access to the vaccine, employers should consider the possible side effects of receipt. Many who receive the vaccine experience COVID-19-like symptoms, including fever, fatigue, and shortness of breath for a day or so. You might consider providing paid time off for your employees to get vaccinated and recover from any side effects.

Another consideration is that, since these vaccines are so new to the market, and have not had the longer-term study of most vaccines, patients may need to be monitored for a period of time after vaccination for adverse reactions. This adds to the logistics and time needed to receive the vaccine.

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Who pays for it?

As a result of the CARES Act, employers must pay for COVID-19 vaccines the same as they would for any preventive care service required by the ACA: at 100% with no cost sharing. In this case, that also applies to providers that are both in and out of your insurer's network for the duration of the public health emergency as declared by HHS (currently through April 2021). Once the public health emergency is over, providing out-of-network coverage is no longer required. This applies to non-grandfathered plans only, though grandfathered plans could choose to cover it in full. Both the vaccine and the cost to administer it fall under this requirement. While the cost of the vaccine should be covered by the government, your health plan must cover the administration costs.

CONCLUSION

This topic continues to change. As the Biden administration picks up the reins, we expect there to be more of a national response to vaccine administration, which will also evolve as more vaccines become available. Be as flexible as possible; you will need to make changes as things develop.

References and Resources

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