



Offering Telehealth to Employees Not Eligible for Group Health Plans

Many employers that sponsor group health plans have portions of their employee population that are not eligible for the group health plan, typically because they are part-time employees. Employers sometimes wish to give these part-time employees something to assist them with their health care needs or expenditures, and it can be tempting to offer that population telemedicine benefits instead of the group health plan.

There are significant compliance concerns with this design however, as a telemedicine program can be robust enough to qualify as a group health plan subject to ERISA, COBRA, HIPAA, and other regulations. When telemedicine is coupled with a major medical program, this only raises minor concerns or compliance needs. When offered as a stand-alone service however, this raises more serious issues. This is because on its own, a telemedicine program cannot meet the ACA's market reforms, such as offering preventive care like immunizations; or certain health screenings. A group health plan that fails to meet market reforms can be subject to penalties of up to \$100 a day per employee.

Offering these employees telemedicine in the short term during the COVID-19 pandemic is likely less risky than a blanket offer of telemedicine coverage for an entire calendar or plan year, but it is currently unclear how regulators will respond to this approach. If an employer wishes to offer telemedicine to employees who are not eligible for the group health plan, they should consult with counsel to ensure they understand the potential risks. Alternatively, employers in this situation could offer part-time employees [Individual Coverage HRAs \(ICHRAs\)](#) to offset the cost of coverage the employee purchases individually. Alera Group will

continue to monitor for any signals from Washington DC that telemedicine may be used in unique ways during the COVID-19 pandemic.

About the Author:

Danielle Capilla is the Director of Compliance for Alera's Employee Benefits division. She previously served as the Senior Vice President of Compliance and Operations and Chief Compliance Officer at United Benefit Advisors (UBA). Additionally, she served as an Adjunct Professor at DePaul University. She worked as a Senior Writer Analyst at Wolters Kluwer and as a Law Clerk at Clifford Law Offices. Danielle graduated with a B.A. in Sociology, History, and Business at Tulane University. She earned her JD in Health Law from DePaul University College of Law.

This email is a service to our clients and friends. It is designed only to give general information on the developments actually covered. It is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice, or render a legal opinion.

Benefit Advisors Network and its members are not attorneys and are not responsible for any legal advice. To fully understand how this or any legal or compliance information affects your unique situation, you should check with a qualified attorney.

© Copyright 2020 Benefit Advisors Network. All rights reserved.