Auxiant®

Compliance Update

Date: May 24, 2022

2nd Quarter 2022 Compliance Updates

The massive regulations over the past few years, designed to provide greater consumer protections for employees and their families, continue to place new and costly responsibilities on plans in 2022 and beyond. Auxiant is committed to making it easier for you to meet the new compliance requirements timely through our framework of customized solutions. We've highlighted with ACTION ITEM below those areas for which Auxiant will need a response from you. This does not represent all plan action required by the rules.

Here, we cover recently issued guidance impacting group health plans, which include:

1) **Telehealth for High Deductible Health Plans – Extension of First Dollar Coverage Exemption**;
   ACTION ITEM: For HDHPs wanting to continue first dollar telemedicine benefits under the 2022 extension, determine how you want to address the gap issue.
2) **Colonoscopy Coverage – Preventive Care Changes**.
   ACTION ITEM: For grandfathered plans, alert us if you'd like to opt-in.

As well as updates on implementation strategies in these areas:

a) **Negotiation and IDR under the No Surprises Act** – Plan Sponsor Options;
   ACTION ITEM: For Auxiant managed NSA claims, alert us if you want to apply negotiation thresholds or increase payments upon appeal. The default is to "stand on the data."
b) **Machine Readable Files – Upcoming Enforcement Deadline**; and
c) **Mental Health Parity – NQTL Comparative Analysis Reminder**.

First Dollar Coverage of Telehealth for High Deductible Health Plans

Generally, a qualified high deductible health plan (HDHP) may not provide benefits for any year until the deductible is met unless under the limited exception for providing preventive care benefits. In response to COVID-19, plan sponsors were allowed to temporarily offer first dollar telehealth services. The most recent update has created a gap making this difficult to administer.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act expanded the preventive care safe harbor for HDHPs to include telehealth services applicable for plan years beginning on or before December 31, 2021. The recently passed 2022 Consolidated Appropriations Act extends the relief for first dollar coverage of telehealth services, but only for the months of April 2022 through December 2022. So, for example, there would be no relief for calendar year plans from January 1, 2022 through March 31, 2022. A July 1st plan would be subject to the extended relief from the Consolidated Appropriations Act from July 1, 2022 through December 31, 2022 but would be without relief from January 1, 2023 through June 30, 2023 unless there is an extension by subsequent legislation.

In a HDHP, telemedicine can be provided prior to the deductible being met if the participant is required to pay the fair market value of the telemedicine visit. Determining how participants pay when telemedicine is received though a plan vendor such as HealthJoy or Teladoc is a plan sponsor decision. There is no published authority on what fair market value equates to, but we have seen consult fees for vendor services up to $65 per service. A plan paying benefits out of alignment with the IRS' HDHP rules could invalidate participant HSAs and create adverse tax consequences for employees.

As a reminder, the Families First Coronavirus Response Act (FFCRA) generally requires group health plans provide benefits for certain items and services related to diagnostic testing for the detection or the diagnosis of COVID-19 during the continuing emergency period. This coverage must be provided without imposing any cost-sharing requirement. Items and services furnished to an individual (*including telehealth visits*) that results in an order for or administration of an in vitro diagnostic product will be covered in a HDHP prior to the deductible being met and without cost sharing so long as appropriately billed by the provider and will not result in a violation of the HDHP first dollar coverage requirement.

Changes to Required Colonoscopy Coverage

On January 10, 2022 the Departments issued colonoscopy coverage changes. Plans must cover and not impose cost sharing with respect to a colonoscopy conducted after a positive non-invasive-stool based screening test or direct visualization screening test for colorectal cancer for certain individuals as described in the United States Preventive Services Task Force recommendation. This goes into effect for plan years on or after June 1, 2022. Without this change, any follow up colonoscopy would likely be considered diagnostic and not paid as preventive. Claims will be processed as preventive so long as coded appropriately. Grandfathered health plans are exempt from this requirement. If you would like to voluntarily adopt this change as part of your 2023 renewal process on a grandfathered plan, please contact your account manager.

Plan Sponsor Options Regarding Negotiation and Independent Dispute Resolution of the No Surprises Act

When Auxiant is managing the open negotiation and independent dispute resolution (IDR) processes, we have implemented a default decision to "stand on the data" for all claims. This means no further amount will be offered above the qualifying payment amount (QPA) and provider engagement will be limited to explaining the initial QPA payment. However, each step is fully customizable to your preferences. A plan may offer additional payment to the provider during the open negotiation period on a claim-by-claim basis so long as we are timely notified of your decision. Another option is to put in place prospective negotiation thresholds and/or minimum claim amounts. At this time, no stop loss carriers have authorized blanket negotiation thresholds.

For claims entering IDR, plans will have another opportunity to adjust the offer amount. Carriers have yet to confirm their intention to cover IDR fees and payment amounts resulting from IDR decisions. We expect more information throughout 2022 as everyone becomes more accustomed to the NSA processes.

These options and statements do not apply to plans utilizing a reference-based pricing partner unless you have coordinated a process with us and your partner to opt-in to the Auxiant solution.

Machine Readable Files

Included in the February 2021 Auxiant Insights update was a comprehensive summary of the Transparency in Coverage Rules. We also sent a detailed machine readable file (MRF) update earlier this month.

Auxiant has made significant progress toward obtaining and hosting MRFs. Early in 2021, Auxiant formed a working group comprising more than 20 network partners which hosts regular meetings centered on joint implementation efforts. We have gone to great lengths to assist networks as they create the MRFs and we test and prepare to host them. At this time, we have received three network test files and expect more as we near the enforcement date. However, several networks are in jeopardy of not providing a file by 7/1/22. Through our vendor, we will provide a single out-of-network MRF for the standard option which we expect to be posted by the deadline. Like the network files, this will not include plan specific data. Plans with unique repricing mechanisms, such as referenced based pricing, Medicare like rates, or direct provider contracts may require additional solutions.

It appears the rule requires plan sponsor engagement to meet posting requirements and complete all necessary data fields. Plans should consider providing a link on their website to the location where the files are publicly available. Auxiant's website, https://transparency.auxiant.com/, will be publicly accessible and updated monthly, to the extent those updated files are made available to us. Manipulation of the MRFs will be required to include plan specific data. At least one network has notified us they will create plans specific files for a monthly fee. Plans should contact their networks to understand options.

Please note, plans with a non-calendar plan year beginning after July 1, 2022 are subject to the rule as of the first day of the 2022 plan year, consistent with the original effective date.

Mental Health Parity Reminders

Auxiant previously issued summaries of the non-quantitative treatment limitation (NQTL) comparative analysis requirement and the current legal landscape impacting autism treatment limitations. We wish to offer a reminder of the NQTL requirement, as the DOL continues to signal its intention to increase enforcement and we have seen further activity on the state level as well. If you haven't completed this, you're not alone but it will have consequences should the DOL key in on your plan. The 2022 Report to Congress revealed none of the NQTL comparative analyses the DOL reviewed contained sufficient information upon initial receipt and many NQTLs ultimately lacked parity. For groups considering a strategy of gathering information and creating an analysis only upon request by the DOL, please note the DOL response demand can be a short as 10 days and a recent client's NQTL comparative analysis took over 10 months to complete.

Please direct any questions regarding the information contained in this Compliance Update to legal@auxiant.com.