



MEDICAL PLAN SURCHARGE FOR COVID-19 UNVACCINATED: CHECKLIST FOR PLAN SPONSORS

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A medical plan surcharge for the COVID-19 unvaccinated is workable, but complex. To implement a surcharge for COVID-19 unvaccinated participants, plan sponsors need to take the following steps:

- Comply with HIPAA nondiscrimination rules that apply to health-contingent wellness programs.**
 - The program must be designed to promote health or prevent disease.
 - The program must be made available to all similarly situated individuals and a reasonable alternative standard (that has no fee) or surcharge waiver is required for those for whom vaccination is unreasonably difficult or medically inadvisable.
 - There must be an annual opportunity to avoid the surcharge.
 - Distribute a HIPAA notice of reasonable alternative standards.
 - The surcharge must be limited to 30% of the total cost of employee-only coverage, which must be coordinated with other health-contingent wellness incentives.

A penalty of \$100/participant/day, subject to self-reporting on IRS Form 8928, applies to violations of the HIPAA nondiscrimination rules.

- Waive surcharge for those unvaccinated due to sincerely held religious beliefs.**
- Amend the medical plan document to describe the surcharge.**
- Distribute an SMM describing the surcharge to medical plan participants.**
- Safeguard COVID-19 vaccination status as confidential information under the ADA.**
- Safeguard reasonable alternative standards requests as PHI under HIPAA.**
- Comply with ERISA's post-service group health plan claims and appeal procedures for disputes about the premium charged. Third party external review will apply for a denial that involves medical judgment.**
- Consider whether coverage is affordable under the ACA in light of the surcharge.**
- If the employer or its agent is administering the vaccine: (i) ADA wellness rules apply (including EEOC notice); (ii) the surcharge cannot be coercive; and (iii) no surcharge can be imposed as a result of a family member being unvaccinated.**
- If the surcharge is implemented mid-year, consider cafeteria plan election changes.**