

MANATT HEALTH

# Navigating COVID-19: Supporting Health Plans Through the Crisis

Manatt is stocked with experts in federal and state insurance regulation, including former regulators and insurance executives, who are well positioned to advise our health plan clients on how to address a myriad of issues facing them during the COVID-19 crisis. We have expertise across products—commercial, Medicare Advantage and Medicaid managed care—that can be deployed to assist our health plan clients in navigating the changing marketplace and the implications on their business.



## Federal Tracking

Manatt is closely tracking congressional actions and federal COVID-19 guidance from the Centers for Medicare & Medicaid Services (CMS), the Office of Civil Rights (OCR), the Office of the Inspector General (OIG) and other healthcare agencies.

- We are providing custom analyses for health plans, based on whether they are focused on Medicare, Medicaid or commercial insurance.
- In addition to guidance specifically addressed to health plans, federal waivers and other changes to the rules governing healthcare providers may also impact plans, as they can address provider credentialing practices, cost sharing, coverage decisions (including telehealth) and other issues.
- We are also providing updates and analysis of statutory changes in the series of bills Congress has passed in response to the crisis.



## Addressing State Actions

Manatt is tracking a wide variety of state actions and proposals related to commercial health insurance coverage of testing and treatment during the COVID-19 outbreak. Current and likely upcoming state action challenges facing health plans include premium grace periods, network expansion and alternative treatment settings, out-of-network coverage and surprise billing, appeals and complaints time frames, waivers of cost sharing, limits on preauthorization and utilization review, claims payment timing, audits and data reporting requirements, premium rates, risk adjustment, and reserves.



## Regulatory Relief

As regulators require insurers to take various actions to benefit vulnerable consumers, insurers should expect reciprocal actions to lessen regulatory burdens that impede or detract from an efficient and effective industry response to the COVID-19 pandemic. Many federal and state regulators recognize the importance of allowing insurers to focus on mission-critical activities and are waiving rules in areas like credentialing that impede insurer efforts to expand network capacity, or suspending reporting requirements in areas like quality metrics that may have long-term benefits but detract from immediate priorities. Manatt is advising its clients on which flexibilities to pursue with state regulators.



## Telehealth

Manatt is advising health plans and other stakeholders on the fast-evolving liberalization of state and federal telehealth policies. In addition to custom analysis, we have developed a stand-alone telehealth tracking product that, for a fixed fee, provides access to a comprehensive 50-state tracker (updated at least weekly) of state telehealth policies:

- State licensure flexibilities related to COVID-19
- Telehealth coverage changes in state Medicaid programs (e.g., new regs or policy from Medicaid agencies or other executive orders)
- Telehealth coverage changes in commercial coverage (e.g., executive orders and other guidance from governors, insurance commissioners, etc.)



## Medicaid Activity

Manatt has a deep bench of experts on Medicaid and managed care plans. We have been monitoring state Medicaid actions, including waiver or temporary suspension of in-person requirements for enrollment and health assessments; filing and reporting requirements (e.g., encounter data, audited financial statements, medical loss ratios); extension of time frames related to appeals and fair hearings; provisional provider credentialing; provider network issues; and much more. Manatt continues to track state activity around federal waivers, including 1135 and 1115 waivers, and their implications to Medicaid managed care. And we have been advising clients on actions states can take to ensure a stable coverage environment, including relaxing Medicaid eligibility requirements and Qualified Health Plan (QHP) premium assistance models using Medicaid enhancement dollars. Finally, Manatt is closely monitoring state interest in relaxing Medicaid actuarial soundness rules and the implications on managed care organizations (MCOs).



## Medicare Advantage

Manatt is assisting health plans in analyzing the impact of Medicare Advantage rules that are triggered by the declaration of a public health emergency. We are also providing guidance on how changes to Original Medicare conditions of participation and conditions of payment flow through to Medicare Advantage organizations, which must offer the same benefits as Original Medicare.



## Privacy

Manatt is helping health plans untangle the web of privacy law changes that have been implemented in response to the COVID-19 pandemic. These initiatives include (i) the waiver of certain HIPAA provisions under Section 1135 of the Social Security Act, (ii) the notifications by HHS that it will exercise enforcement discretion regarding the use of platforms such as FaceTime for telehealth and the disclosure of protected health information by business associates for public health and health oversight purposes, and (iii) federal legislation loosening the patient consent requirements for substance use disorder information under 42 C.F.R. Part 2.



## Litigation

In this uncertain time, litigation is inevitable. This will be true for every industry, but it will be particularly true for healthcare. A barrage of ever-changing and sometimes-conflicting laws and regulatory guidance will raise issues of first impression, not just on whether plans are complying with brand-new requirements, but also on topics like jurisdiction, standing and preemption. And the normal challenges of healthcare litigation will be compounded by nationwide court closures and reductions in services. Manatt's deep bench of healthcare litigators have spent years on the front lines of healthcare litigation on behalf of both providers and payers, so we come pre-armed with substantive and procedural expertise. We are also up to date on the latest policy and regulatory developments and ready to spring into action as litigation becomes necessary.

## For More Information



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### About Manatt Health

Manatt Health integrates consulting and legal expertise to better serve the complex needs of clients across the healthcare system. Combining firsthand experience in shaping public policy, sophisticated strategy insight, deep analytic capabilities and legal excellence, we provide uniquely valuable professional services to the full range of health industry players. Our diverse team of more than 160 consultants and attorneys from Manatt, Phelps & Phillips, LLP, and its consulting subsidiary, Manatt Health Strategies, LLC, is passionate about helping our clients advance their business interests, fulfill their missions and lead healthcare into the future.