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Date: October 7, 2020

To: Board of Trustees, San Mateo Electrical Workers Health Care Plan (ANNUAL MEETING)

From: Lois Chang, Trust Counsel

Re: FEDERAL COMPLIANCE & AFFORDABLE CARE ACT UPDATES FOR 2021

Below is a summary of 2021 Compliance and Affordable Care Act updates for 2021. No Action is necessary now. This memo is being provided for informative purposes.

- **COVID-19 Coverage Considerations for 2021.** Given that the pandemic is still ongoing and there is no declared end to the public health emergency, the San Mateo Electrical Workers Health Care Plan (“Plan”) should consider it may have to extend the federally mandated COVID-19 testing and items and services furnished to an individual during the health care provider office visits (including in-person and telemedicine visits) urgent care center visits and emergency room visits that result in an order or administration of COVID-19 testing without cost-sharing into 2021. Another thing to consider is whether the Plan wishes to extend telehealth coverage and coverage for COVID-19 treatment into 2021 (which is currently not required). (**NOTE: As a reminder, this Plan has chosen to cover COVID-19 treatment received in-network at 100% and out-of-network services at 80% until December 31, 2020 and has chosen to cover telemedicine for all medically necessary treatment throughout the public health emergency period.**) Depending on the claims utilization and cost impact (if any to the Plan) perhaps the Board of Trustees can revisit this at the December meeting (when the COVID-19 treatment is set to expire).
- **Emergency Expanded FMLA Leave under FFCRA (For Continued Coverage).** As you may recall, the Families First Coronavirus Response Act (“FFCRA”) amended the Family Medical Leave Act (“FMLA”) to temporarily require employers with less than 500 employees, from April 1, 2020 through December 31, 2020, to provide up to 12 weeks of leave if an employee is unable to work or telework because he/she has to care for his/her son or daughter due to the closure of the child’s school or place of care or the unavailability of a childcare provider due to the COVID-19 public health emergency. Unlike traditional FMLA rules, there is no hours worked requirement for eligibility instead the employee just has to have been employed for at least 30 calendar days. FFCRA DOL FAQ further clarifies that plan sponsors subject to these rules must continue an employee’s group health plan coverage during the emergency FMLA on the same conditions as if the employee had continued to work. The employee must continue to make any applicable contributions to the cost of their health coverage and employers have to submit the required contributions to the Plan on the employee’s behalf for approved emergency FMLA leave. (**NOTE: We have prepared a Plan Amendment amending the FMLA section under your Plan rules to reflect this temporary requirement to continue group health coverage for those employees with approved Emergency Expanded FMLA.**)
- **New Hospital Price Transparency Final Rules for 2021 (and Proposed Transparency Rules for Non-GF Plans/Insurers).** Per a final rule passed back in November 15, 2019, effective January 1, 2021, hospitals will be required to make a public list of their standard charges for certain items and services they provide on their websites and to also publish payer-specific negotiated rates (ex. has negotiated with third-party payers) for 300 shoppable services which consumers may have the opportunity to shop (ex. imaging and lab services, medical and surgical procedures and outpatient clinical visits). (**NOTE: Although this requirement applies to hospitals it will be interesting to see how participants and dependents can shop around to see the hospital’s prices and to compare costs. We also anticipate litigation on this rule that may delay it.**)

Proposed rules would also require non-grandfathered group health plans and insurers offering non-grandfathered health coverage to disclose personalized price and cost-sharing information for covered items and services, including prescription drugs through an internet-based self-service tool as well as in paper form to participants. As well as

making available to the public in-network negotiated rates with network providers and historical payments of allowed amounts to out-of-network providers. **(NOTE: These proposed rules only apply to Non-GF plans and may take effect in 2021. They haven't been finalized yet but we will continue to monitor. No action is necessary for this Plan.)**

- **IRS Provides Transitional Relief for ACA Reporting.** The 2020 Form 1095-B and 1095-C individual statements have been extended from Feb. 1, 2021 to March 2, 2021. The IRS has indicated this may be the last year they will be giving extensions for the ACA reporting and for applying any good faith effort standards to comply. However, there is no extension for filing the 1094-B/95-B and 1094-C/95-C forms with the Internal Revenue Service. This deadline remains March 1, 2021 (if filing by paper) or March 31, 2021 (if filing electronically). In addition, the IRS has indicated it will not assess a penalty on group health plans and/or insurers obligations to furnish a Form 1095-B statement to individuals since the individual shared responsibility payment is now zero for 2020, if two conditions are met: (1) prominently post notice on website that an individual may receive a copy of their 2020 Form 1095-B upon request and the notice must include a phone number, email and physical address which the request may be made and (2) must provide a Form 1095-B within 30 days to any individual who request the Form. **(NOTE: For your self-funded plan the Trust Fund office will send out the 1094-B/95-B statements to individuals and file with the IRS for the self-funded plan and Kaiser is responsible for complying for the HMO options. The Plan also has the option to fulfill this requirement by utilizing the relief for furnishing the individual statements.)**
- **ACA Increase in Employer Shared Responsibility Assessments.** The 2021 employer mandate penalty for failure to offer minimum essential coverage is \$2,700 per full-time employee (is a 5.1% increase from the \$2,570 amount for 2020) and the penalty for offering unaffordable coverage is \$4,060 per full-time employee who receives subsidized coverage through the exchange (is a 5.2% increase from the \$3,860 amount for 2020). **(NOTE: This should not be an issue for signatory employers who contribute to this Plan for its collectively bargained and subscription agreement employees as we believe this Plan provides minimum essential coverage)**
- **ACA Increase in Employee Affordability Percentage.** For 2021, (if a group health plan requires employee contributions) the maximum percentage that an employee can be required to pay for monthly health insurance premiums based on the lowest-cost employer-sponsored plan for self-only option cannot exceed 9.83% (compared to 9.78% in 2020) of an employee's household income. **(NOTE: This is not applicable to your Plan as no employee contributions are required for health coverage)**
- **Patient-Centered Outcomes Research Institute Fee (PCORI Fee).** As a reminder the PCORI fee has been extended for another 10 years through 2029. As such, the filing deadline for a plan year that ends in Jan. 2020 through September 2020 would be next year July 31, 2021. The new rate is \$2.54 per covered life and is paid by the self-funded plan for self-insured coverage and insurers for insured policies. **(NOTE: For your Plan year which ended in May 2020 the PCORI fee would be due next year in July)**
- **ACA Updated Preventive Services Recommendations for Non-GF Plan.** The U.S. Preventive Services Task force has updated its posted list of recommended preventive services that non-grandfathered health plans have to provide in-network without cost-sharing (ex. no copayment, coinsurance or deductible) to participants and dependents. <https://www.uspreventiveservicestaskforce.org/uspstf/recommendation-topics/uspstf-and-b-recommendations>. Updated recommendations are required to be covered without cost-sharing beginning in the plan year that begins on or after exactly 1 year from the latest issue date. Some of the updated recommendations since 2020 include the following:
 - ❖ Hepatitis C Screening infection in adults aged 18 to 79 years (*Date Issued: March 2020*)
 - ❖ Screening for Unhealthy Drug Use in Adults (*Date Issued: June 2020*)
 - ❖ Prevention and cessation of tobacco use among school-aged children & adolescents (*Date Issued: April 2020*)**(NOTE: As a reminder although your Plan is considered a Grandfathered plan it was amended in 2016 to voluntarily provide for in-network preventive care services consistent with the recommendations set by the federal government. As such, we will work with the Plan Office and Consultants to ensure the self-funded plan's preventive benefits for 2021 reflect the latest recommendations per federal guidance.)**

If you have any questions or need more information, please contact us.

cc: Sandy Stephenson & Debbie Wolfe, UAS Administrators
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