THE PANDEMIC MAY BE ON THE BACK NINE; BUT WHAT ABOUT ITS IMPACT?!!

Written By Christopher M. Aguiar, Esq. – The Phia Group, LLC
VP, Legal & Stop Loss Recovery Services

What a year; 2020 was one for the history books - the year almost everything changed (except aggressive, polarizing, political rhetoric)! Presidential Administrations changed as we witnessed an historic election, the results of which were not determined for over a week and disputed for several more.

Live shows became live streams and drive ins. Movie theatres turned into ghost towns. Remote working became the norm. City dwellers fled in droves in search of more space and cheaper housing costs. Iconic/historic hotspots became relics of the past. Supply in the housing market, nationally, reached never-before seen lows while the future of the commercial real estate market spiraled into question. Parents doubled as financial providers and teachers.

Finally, and perhaps most upsetting of all, remote learning became a norm that virtually all school systems were forced to learn to implement, cementing that future generations of children may never again experience the magic of a snow day!

As vaccinations ramp and millions of Americans march towards “herd immunity”, many are starting to feel that we are reaching the home stretch. What exactly, though, does life after COVID, the so-called “new norm”, look like?

Even after the pandemic is behind us, we will be experiencing its effects, and perhaps some newly established behaviors, well into the future. Whether it be an increase in virtual meetings and remote work, a change in the way we greet each other upon meeting, an increase in mask usage during peak viral seasons, or as society deals with some of the financial consequences of a year of lock downs and fear, people and organizations will need to find ways to address some of the financial concerns that came with this pandemic.

Benefit plans, for example, may need to find new innovative ways to cut costs as they deal with what some are projecting to be a greater than normal increase in medical spend. Some projections, like those made by the American Institute of Certified Public Accountants, indicate that national health spending projections are showing a per year increase over the next decade at 450% of the inflation rate seen between 2014 – 2018 (from 1.2% to 5.4%).

This COVID surcharge is no doubt intended to make up some of the losses suffered by hospitals who, according to healthaffairs.org, saw a 35.8% decrease in hospital spending in March and April of 2020 alone – thanks in large part to a decrease in non-critical services, those among the most profitable delivered by hospitals.

Luckily, regulators across the country are seeking ways to make cost containment for benefit plans a bit more possible. A perfect example of this is with potential changes in worker's compensation coverage – an area of insurance traditionally heavily regulated by state government.

Why are changes necessary in the worker's compensation arena? Proving someone contracted the virus at work can be very difficult, even in situations where the person has a high-risk job.

For example, a nurse assigned to a COVID unit is much more likely to contract the virus than, say, a grocery store cashier. Yet, both may be considered essential employees and, by the very nature of their employment, contract the virus while working.

Both could also easily contract the virus at the grocery store on the way home from their shift while running errands after work. How, then, do you prove causation - the most important element of an injury claim? Causation is the element that ultimately establishes an employee contracted the virus while dealing with an infected person rather than getting too close during a walk and breathing in that person's droplets.

Every state treats the key legal concept differently, that of 'Presumptive Illness'. This presumption, often used for firefighters who contract certain diseases such as lung disease or cancer that were likely caused by their time on the job, requires the insurance company to presume causation while allowing them to prove otherwise.

So, the nurse assigned to a COVID unit would be presumed to have contracted the virus there; the insurance carrier then has the burden to prove otherwise. Causation, then, becomes a significantly lesser barrier to benefits.

As of March 22, 2021 - 16 states have some type of presumption that would cover COVID-19 already on the books; the remaining 34, however, do not. 20 of those states either have no activity considering a change to their presumptive illness practices as it relates to worker's compensations benefits, or bills have been introduced but not passed.

All entities providing or administering health benefit plans in America should be evaluating all their cost containment options in a post COVID world and preparing for what could be a significant increase of medical bills both, directly and indirectly related to this pandemic.

The potential cost to health benefit plans as a result of this virus will no doubt be significant. We have all heard the stories, COVID treatment itself is very expensive; the other charges, however, are also likely primed to see increases as hospitals review their charge masters and attempt to remedy a black hole of non-emergent care caused by lock downs and folks unwilling to trek to the hospital.

After months of record losses, it is only natural that they will find ways to recoup them. If benefit plans, too, are going to stem the tide, they must seek options to account, budget, and wherever possible, mitigate this surge of inevitable costs. ■