



EMPLOYEE BENEFITS

# Guiding Employers Through Challenges in Employee Benefits



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## MARKETPLACE OVERVIEW

# COVID-19's Influence on the Office Environment

While employers normally confront a continuous barrage of business, benefits and human resource challenges, the wide-ranging impacts of the COVID-19 pandemic have in no small way pushed many of these business owners to a breaking point. Among the pressing issues facing employers today:

- Although the distribution of COVID-19 vaccines offer employers optimism that a "new normal;" may be around the corner, implementation arrives with a variety of compliance questions and concerns.
- Pushed to be creative in their methods to maintain benefits within budgetary constraints, many employers have investigated cost-saving ideas that in the past might have been viewed as extreme.
- Addressing the general deterioration in employee mental health and overall well-being is a priority as businesses see loss of productivity due to their workers struggle with pandemic-induced stress, anxiety and depression.
- Pandemic fears have caused many employees to postpone routine preventive care and treatment for medical issues which may lead to greater health risks and higher medical costs in the future.

As a result, it would be beneficial for business leaders to remain up-to-date on emerging trends and resources available to assist them in the development and implementation of effective solutions. In this guide we present these and other business challenges and suggest practical methods and strategies for employers to consider.



To further explore any of these solutions, contact us.



# Customizing a COVID-19 Vaccination Strategy to Fit Your Company's Needs

With the approval of multiple COVID-19 vaccines and initial stages of widespread distribution, business owners are hopeful and eager that their employees may soon be able to return safely to the workplace. Unfortunately, excitement for the employer is tempered with the challenge of deciding whether and how they will make employee vaccinations part of their COVID-19 response planning.

## Can Employee Vaccinations be Mandated?

According to a confirmation by the Equal Opportunity Employment Commission (EEOC), employers are able to mandate a COVID-19 vaccination as a condition of employment. The position taken by the EEOC is that a mandatory vaccine is neither a medical exam nor a disability-related inquiry under the Americans with Disabilities Act (ADA). Instead, it is an employer policy subject to reasonable accommodations for those who cannot comply due to a disability or sincerely held religious beliefs or practices.

The caveat is, however that if the employer makes a decision to administer the vaccine (through an on-site clinic or vendor), it will trigger the ADA. This is because

pre-screening questions are likely to elicit information about an employee's disability. In this situation, employers should be prepared to demonstrate that such inquiries are "job-related and consistent with business necessity," such as promoting the health and safety of the workplace.

## Do Any Limitations Apply to a Mandatory Vaccination Policy?

Employees generally don't have the right to refuse vaccinations based on ethics, civil rights concerns or fear, unless specifically provided by state law. However, employees who cannot be vaccinated due to a disability or religious belief may be entitled to a reasonable accommodation unless it presents an "undue hardship" to the employer.

## Medical/Disability Objections

If a medical objection is made, you should initiate the ADA interactive process to:

- Identify the employee's condition;
- Determine whether it rises to the level of a disability under the ADA; and
- Understand why it impacts or prevents the employee from being vaccinated.

We recommend providing the employee with an ADA-specific form for their medical provider to complete.

If the employee provides sufficient documentation, the next step is to analyze the reasonable accommodations available. To be reasonable, the accommodation must enable the employer to address its concerns such as safety, while meeting the employee's medical needs. The employee does not automatically get their preferred accommodation; an employer may find and choose alternative reasonable accommodations.

For some positions, such as those in nursing homes providing direct care to vulnerable populations, or those in hospitals working with patients, accommodations may not be possible. For others, such as office staff at a manufacturing company, or employees who work outdoors, alternatives may have to be considered.

In determining what's reasonable, employers should take into consideration the risk mitigation strategies they have had in place up to this point (e.g., wearing masks, maintaining social distancing, cleaning protocols, etc.) and whether it has been effective at preventing outbreaks.

Each employee objection must be considered on a case-by-case basis. Although employers may deny an accommodation based on undue hardship, the ADA prohibits blanket rules and dislikes inflexibility. Employers should consistently apply exceptions or accommodations in order to reduce the risk of discrimination claims.

## Religious Objections

According to the EEOC, "religion" includes not only traditional, organized religions, but also religious beliefs that are "new, uncommon, not part of a formal church or sect, only subscribed to by a small number of people, or that seem illogical or unreasonable to others." However, social, political or economic philosophies, or personal preferences, are not "religious" beliefs under federal law.

If a religious objection is made, the employer is permitted to ask questions necessary to determine why the belief or practice impacts the employee's ability to be vaccinated. For example, employers are permitted to ask employees if they have received other vaccinations, and if so, why having the COVID-19 vaccination conflicts with their religious beliefs.

Under Title VII of the Civil Rights Act, employers must determine if a reasonable accommodation can meet the employee's religious need. However, the bar is much lower than the ADA for rejecting religious accommodation requests, since anything that imposes "more than de minimis cost" to the operation of the employer's business is considered an undue hardship, and thus unreasonable.

To ensure consistency and avoid claims of discrimination, we recommend providing the employee with a form to complete.

Keep in mind that much around the COVID-19 vaccine is subject to change. Employers should be flexible and ready to pivot if the circumstances or regulations require.



## Should You Mandate Employee Vaccinations?

The answer to this question will depend on the unique conditions and demographics of each employer and their workforce. Whatever you deem best for your company, it will be necessary that your approach is objectively supportable, consistent with your culture, and communicated effectively to all those who will be impacted.

### **For employers making vaccines mandatory:**

For employers making vaccinations mandatory, it will be important to determine the consequences (e.g., discipline, suspension, termination, etc.) for any employee who refuses to be vaccinated for personal reasons not related to a disability, religious belief or state-law objections. These policies should be communicated and applied consistently for all employees.

Business owners should also prepare for the administrative requirements and associated costs and resource burdens that will be incurred (e.g., ensuring compliance, maintaining records, etc.) if a mandatory vaccination route is chosen.

### **For employers deciding only to encourage or incentivize employees to be vaccinated:**

As an alternative, employers can choose to strongly encourage or incentivize employees to get vaccinated instead of a mandate. Incentives can include offering to pay for all costs, providing paid time off to receive the vaccine, or bringing medical personnel on-site to administer the vaccine (much like many employers already do with flu shots).

### **For employers deciding to take no position in regard to vaccinations:**

An employer can also choose to take no position regarding vaccinations. However, if such an approach is taken, the business owner should be prepared to answer some of the following employee questions:

- Why are you not encouraging or mandating employees get vaccinated?
- Can I stay home unless or until others are vaccinated?
- Why do you not care about the safety or health of your employees?

Regardless of the approach taken with regard to vaccinations, state and local safety mandates on business operations, face coverings, and social distancing will still apply.

# Reshaping Health Benefits Strategies to Focus on Cost-Control



Health insurance premiums continued their trend upward in 2020, reflecting a 22% increase over the past five years and 55% over the last decade, according to the Kaiser Family Foundation's 2020 annual Employer Health Benefits survey. These costs, along with the economic downturn resulting from the COVID-19 pandemic has placed a serious financial strain on many employers. As a result, employers have become less focused on presenting a traditional benefits package and instead have instead shifted their objective from “recruit and retain” to “survive.” To this end, many are now considering more radical cost-control strategies, implementing individual coverage health reimbursement arrangements (ICHRA) or alternate care models.

## Individual Coverage Health Reimbursement Arrangements (ICHRA)

An ICHRA is designed to present employers an alternative to traditional group health plan. Through this program, employees can utilize pre-tax dollars to pay for qualified medical expenses, such as monthly premiums and out-of-pocket costs like deductibles and coinsurance. Although employers were initially hesitant to implement ICHRAs because of the numerous compliance requirements, more employers are now willing to tackle the compliance challenges in order to achieve desired cost savings. According to PeopleKeep's The First 9 Months of ICHRA Report, 800,000 organizations are expected to offer an ICHRA by 2024. Although a majority of these will be small employers, offering an ICHRA plan may make sense for larger employers who have disproportionately adverse claim experience.

Before considering implementation of an ICHRA, there are significant eligibility and compliance issues business owners should be aware of:

1. **Eligibility.** An employee who elects to participate in an ICHRA offered through their employer must enroll (along with any covered dependents) in one of the following required programs:
  - a. Individual health care coverage either through the Marketplace, or through a private plan
  - b. Medicare Parts A (Hospital Insurance), Part B (Medical Insurance) or Part C (Medicare Advantage)
2. **The “No choice” rule.** Employers are not allowed to offer employees a choice between a traditional group health plan and an ICHRA.
3. **Class rules.** If an employer offers an ICHRA to an employee, it must offer the ICHRA to all employees in that same employee “class” as set forth by the federal government.



**NOTE:** Short term plans and limited benefit programs like dental or vision do not fulfill these coverage requirements.

4. **Spousal coverage limits.** Employees covered under a spouse's plan typically will not receive benefits from an ICHRA. While the IRS and ICHRA rules do not specifically address group health plan premiums, it appears an employer is not allowed to use the ICHRA or any other health reimbursement arrangement (HRA) to reimburse a spouse's group health plan premiums.
5. **Limited steerage opportunities.** Employers cannot direct their employees to specific insurance carriers or specific plans. Doing so likely would cause the employees' individual health insurance plans to be subject to the Employee Retirement Income Security Act (ERISA). Employers can provide objective education about health insurance and factors employees should consider when selecting an individual health insurance policy.



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# Smooth Benefit Transition



It is possible that some employees may view any efforts to make a substantial change in benefits programs with suspicion or anxiousness. If you decide to switch to a less traditional benefit offering a clear explanation of what is changing and why can help reduce uncertainty and smooth the transition for your employees. It may also be worth asking your benefits vendor to provide any available tools and resources that will assist your employees in understanding and maximizing the value of their new benefit program. If you are thinking about one of these extreme cost-control programs, be sure to contact your MBA representative for an evaluation of potential savings, to explore different plan designs, connect with vendors, and review compliance obligations.



# COVID-19 Drives More Employers to Add Alternative Care Models

Even before COVID-19's arrival in early 2020, many employers were looking for new methods of controlling costs through the addition of alternative care models. These programs achieve success by encouraging individuals to utilize their health plans, manage their modifiable risk factors and associated costs, and improving the overall levels of employee health and well-being. The pandemic has only served to increase the use of these programs.

According to a September 2020 Centers for Disease Control and Prevention (CDC) Morbidity and Mortality Weekly Report (MMWR), an estimated 41% of U.S. adults avoided medical care during the pandemic, including 32% who avoided routine care. Because of this disruption, many individuals have been going without preventive care and chronic condition management, both of which are crucial for managing health and healthcare costs. To help slow this escalating trend, employers can encourage the continued use of healthcare services by expanding delivery options for employees.

## Telehealth Programs

Telemedicine programs allow a person to consult with a real doctor from the privacy of their home or office, receiving acute, chronic, primary and specialty care. By doing so in this way, the risk of spreading COVID-19 and other communicable diseases is minimized. During this process, physicians are able to diagnose illnesses, recommend treatment and prescribe medication (excluding controlled substances) if appropriate. High patient satisfaction and the adoption of telemedicine by healthcare systems could result in a permanent shift in the way healthcare is delivered.



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Nearly half of all adults in the United States put off receiving medical care during the pandemic.





## Direct Primary Care

With direct primary care (DPC) models, a fixed monthly fee is paid to a health care provider's practice in exchange for access to a doctor. And through a lower doctor to patient ratio, the program aims to improve the level of care provided by allowing patients to spend more time with their doctor. Although most DPCs typically includes in-person (usually same day) and telehealth visits, some models may even allow for at-home visits. In addition to patients having access to primary care services, lab work, X-rays and other primary care needs are also typically covered. More recently, a few DPC models have even expanded to provide prescription drug service and specialist services like physical therapy and behavioral health care.

The broader and more flexible platform of services offered by a DPC can significantly increase utilization verses a stand-alone telemedicine model. In some cases, employers have been able to reduce costs and increase employee satisfaction by offering DPC, even with a high-deductible health plan.

The DPC model has been gaining popularity over the past decade, with more than 1,000 DPC practices in 49 states, serving approximately 500,000 patients, according to data from the Direct Primary Care Coalition. COVID-19 may accelerate the trend. As office visits have declined during the pandemic, many primary care providers have lost significant revenue and are looking at DPC models as a way to stabilize operations.

## Employee Clinics

A survey of 255 employers by the nonprofit National Association of Worksite Health Centers found that in an effort to control rising health care costs, employers are increasingly turning to onsite and near-site health care clinics. These clinics provide easy access to medical services and improve employee health, which ultimately leads to increased worker productivity as well. During the past year, clinics have proven to be flexible enough to adapt to the pandemic, implementing telehealth services and/or providing COVID-19 testing and virtual counseling.

Also noteworthy:

- Employee clinics are also likely to play a key role in the facilitation of the COVID-19 vaccine
- Acute care, emergency treatment, first aid and wellness are among the top services provided
- Cost controls are achieved through a reduction in medical care costs, including a reduced number of visits to the more costly emergency room and less time lost by employees leaving work to see outside medical providers

**Modifying your group benefit package by adding alternative forms of healthcare delivery will remain an increasingly viable way to control overall healthcare costs and improve the well-being of your employee population. Your MBA employee benefits consultant can work with you to develop a strategic benefits plan that includes initiatives designed to support your objectives.**



## Work-From-Home Becomes the New Normal

Even prior to the pandemic, many employers were allowing greater numbers of employees to work remotely. In its 2019 Employee Benefits report, the Society for Human Resource Management (SHRM) showed that 69% of employers were offering telecommuting on an as-needed basis, while 42% were offering partial telecommuting.

As the pandemic's grip on the country intensified into the second quarter of 2020, lockdowns and office closures became widespread. The Bureau of Labor and Statistics (BLS) reported in Ability to work from home: evidence from two surveys and implications for the labor market in the COVID-19 pandemic, an estimated 31% of workers had switched to full-time remote work as a result of the pandemic. Human resources experts expect the trend to continue well after the pandemic is contained.

Even after the vaccination effort gains steam, stay at home orders are eased and other measures make it possible for employees to return to the workplace, employees may have reservations about returning to an in-person setting or may not be willing to give up the flexibility remote work provides. While employers may not have to continue to allow remote work full-time for the majority of their workforce, they will want to be ready to address employee concerns, potentially offer flexible solutions, and ensure compliance.



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Nearly one third of full-time employees switched to remote work during COVID-19.



## Communicating Changes and Setting Expectations

Communication is one of the keys to running a successful business. Once you are ready to implement new or updated remote work policies, communicate the changes to your employees and articulate why you are choosing to allow, discontinue, or reimagine remote work. Set clear expectations for remote work, such as expected behaviors, working hours, and performance expectations, including objective performance measurement criteria. Clearly define and communicate the consequences for not meeting performance or other remote work expectations, such as performance management, discipline and termination. Once you set expectations, apply them consistently.

## ADA Considerations

Employers should be prepared for the employee who may request continuation of work from home privileges due to health concerns. Employees with a qualifying medical condition under the Americans with Disabilities Act (ADA) may be entitled to a workplace accommodation, so long as the request is not an undue hardship on the employer. Engage in an interactive process with employees requesting remote work as an accommodation to help determine what adjustments can or should be made.

As you consider bringing your employees back to the office, examine your remote work practices and policies and consider making changes as needed.



# Factors Influencing Today's Rapid Escalation in Prescription Drug Costs

Millions of people in America rely on prescription drugs to manage health conditions, more so than almost any other country. And unfortunately, drug prices have been increasing at a rate higher than inflation for some time now, impacting both individuals and employers. Even more revealing is that the cost of prescription drugs accounts for greater than 22 percent of the overall premium dollar spent on healthcare.

Efforts to slow the price increases for prescription drugs are up against the powerful and complex forces that make up the drug industry. The reasons for high prescription drug prices are many and complex in nature, but there are a few primary cost drivers:

- Utilization
- Lack of competition
- Supply chain profits
- High cost of specialty drugs
- Use of manufacturer rebates
- Advertising directly to the consumer

## Utilization

Utilization of drugs has increased over the years due to the number of new drugs that have been introduced, the changes in treatment regimens, more effective identification of diseases and an aging workforce. Additionally, overutilization has driven up costs, as our fee-for-service system provides incentives for pharmacies, physicians and drug manufacturers based on services provided, the number and day supply of prescriptions filled and volume of pharmaceutical drugs sold.

## Lack of Competition

Due largely to abuses in the patent system, drug makers have created monopolies by filing for redundant patents with the strategic intent to block any generic alternatives for their drugs. These patent monopolies allow the drug company to maintain market exclusivity, as lack of market competition is key to driving the cost of drug products higher. Additionally, integration and consolidation across the pharmacy industry among drug wholesalers, health insurance providers, pharmacy benefits managers (PBMs), retail pharmacy chains, and mail and specialty pharmacies, does not readily foster transparency and stifles competitive forces across the supply chain. For example, the three largest PBMs control approximately 75% of the market in the U.S., according to the PBMs 2020 Annual Review by Access Market Intelligence.

## Supply Chain Profits

Pharmaceutical manufacturers and wholesalers have produced a history of earning substantial profits at the expense of higher costs for plan sponsors and consumers. Although these profits have come under scrutiny by federal and state legislators, for now at least, they continue to be a serious component in the escalation of drug prices. Although plan sponsors are not able to directly control these pharmaceutical company and/or wholesaler profits, business owners can work in tandem with their PBM to negotiate market-competitive contract terms that are reasonable for all parties.

## High Cost of Specialty Drugs

Specialty drugs (or “biologics” as they are called when produced from living cells) are used to treat a variety of serious conditions. Because they require special storage, careful handling and unique methods of administration, they come with big price tags and those price tags continue to escalate. A single dose for gene therapies to treat rare diseases can cost upward of \$2 million. Although only 2% of the population uses specialty drugs, they account for nearly half of prescription drug expenditures, according to Express Scripts’ 2019 Drug Trend Report.

## Use of Manufacturer Rebates

Drug manufacturers often provide rebates to encourage utilization of expensive, name-brand medications that do not have a less-expensive generic equivalent. Although employers and plan members can receive rebates directly, depending on the plan design, most, if not all of the rebates go to the PBM. Employers can instead attempt to negotiate these rebates with the PBM, allowing them a voice in how rebate dollars are distributed.

## Advertising Directly to the Consumer

It comes as little surprise to hear that pharmaceutical companies spend billions of dollars per year on advertising geared directly to the consumer. Their motive ... to increase the use of targeted prescription medications. According to a report from the Journal of the American Board of Family Medicine (JABFM), Direct-to-Consumer Prescription Drug Advertising and Patient-Provider Interactions, 26% of respondents said they had talked to a healthcare provider about a specific prescription drug they saw advertised, and 16% of those respondents received a prescription for the medication they asked about. Seventy-six percent of respondents were likely to discuss an advertised medication with their healthcare provider.

## Cost-Containment Strategies

The keys for successfully managing prescription drug expenditures starts with a solid contract that provides employer health plan sponsors with the transparency required, favorable definitions, terms and provisions, and market-competitive financial guarantees. Actual performance results must be measured, reported and reconciled to the guaranteed metrics with the vendor. More advanced strategies range from optimizing plan design, networks, formulary, and clinical programs to leveraging resources that educate and encourage members to make informed choices and pursue healthier lifestyles.

**Our MBA team can work with you to review your company’s challenges and to develop customized solutions to help control prescription costs**

# COVID-19 and Mental Health in the Workplace



The COVID-19 pandemic has changed life as we know it. The lack of physical contact with our friends and loved ones, the pay cuts, loss of employment and death of those we know have increased the stress for millions of employees. As businesses reopen and employees return to work, these psychosocial risks have the potential to pose serious health concerns for employees ... and subsequently impact a company's bottom line.

According to a July 2020 poll conducted by the Kaiser Family Foundation (KFF), 53% of adults in the U.S. reported a negative impact on their well-being due to worry and stress related to COVID-19. Specifically, respondents reported difficulty sleeping or appetite changes, increased alcohol consumption or substance abuse, and worsening chronic conditions. Additionally, more than one in three adults in the U.S. have reported symptoms of anxiety or depressive disorder during the pandemic.

Even before the pandemic, employers were beginning to recognize the importance of supporting employee behavioral health. In 2019, the American Psychiatric Association estimated \$44 billion in lost productivity every year due to behavioral health concerns, such as depression and anxiety.

## Measures Employers Can Take to Minimize Employee Mental Health Risk

While employee behavioral health has been a growing concern for several years, COVID-19 has created new and unique challenges that are impacting a greater number of individuals and compounding pre-existing health concerns:

**Social isolation.** Social isolation, loneliness and even quarantining have been linked to poor behavioral health. Work from home mandates, stay at home restrictions, distance learning, business closures, and personal health concerns have all contributed to the negative effects of social isolation.

**Burnout.** Burnout continues to impact employee behavioral health, not just for frontline healthcare and other "essential" employees, but for remote workers as well. In a survey conducted by FlexJobs with the nonprofit Mental Health America, 40% of respondents experienced burnout during the pandemic. Thirty-seven

percent reported working longer hours than usual since the pandemic started, and 67% percent agreed that workplace stress affects their behavioral health and well-being.

**Access to care.** COVID-19 has also highlighted gaps in meeting behavioral health needs and disrupted access to care:

- The current shortage of behavioral health professionals makes it difficult to find consistent care.
- Employees experiencing furlough or unemployment may have lost access to employer-provided insurance, making it difficult to pay for services.
- Even with insurance coverage, in-network care options may be limited.

# Effective Means of Supporting Employee Behavioral Health

Despite the negative effects of the pandemic on employee behavioral health, employers can help minimize the impact by actively supporting behavioral health in the workplace. A good first step in addressing the pandemic's mental health impacts is to develop effective channels of communication designed to allow employees to obtain information on all key workplace issues, such as changes in roles and responsibilities, the future of their employment, etc. Proper communication can also help to ease anxieties that can develop from concerns about physical isolation and fears of contagion spread in the office. After that:

## 1. Utilize existing resources

**Health insurance provider.** By working with your health insurance provider you can ensure continued access to in-network behavioral health services, or to expand options for accessing care.

**Employee Assistance Program (EAP).** Your EAP may provide resources to help employees address behavioral health concerns and other stressors. Most offer telephone access to licensed counselors who can help with short-term problem resolution. Some may even include free one-on-one behavioral health sessions. Communicate the availability of this resource to your employees and how to access services. Check with your EAP provider to see what employee training or other communication resources may be available.

**Workplace wellness.** Your workplace wellness program or health benefits providers may offer tools and resources you can use to help employees manage stress and anxiety and maintain healthy habits, such as getting enough sleep and regular exercise, and eating healthy.

**Paid time off (PTO).** Encourage employees to use PTO to refresh and recharge. Consider expanding the types of PTO you offer to include paid sick time to give employees time to take care of their personal health.

## 2. Invest in additional resources

**Telemedicine.** Telemedicine has helped improve access to care by expanding to provide behavioral health services. Work with your employee benefits advisor to determine and implement a solution best suited to your employees' needs.

**Support for parents and families.** Distance learning, remote work, and even quarantine orders have made it difficult for employees to effectively balance work and home responsibilities. More and more employers have begun to offer backup or emergency child and/or elder care services to help employees find care for their children or manage needs for elderly relatives.

**Apps.** Many different apps are available to help employees improve behavioral health and well-being. While some can increase access to behavioral health care or resources, others focus on improving overall health and well-being. Since many free apps have limited features, employers may want to consider paying subscription fees to ensure employees get the most benefit. Use your existing health plan (or even EAP) claims data to determine which apps make the most sense for your employee population.

Many health insurance providers have partnered with behavioral health resources to enhance access to telephonic, virtual counseling, stress management and resiliency apps.



### 3. Encourage connection

**Check-in meetings.** Your leadership team and your managers have a critical role to play in supporting employee behavioral health. Encourage more frequent check-ins between managers and direct reports, both one-on-one and as a team. Use video conferencing tools to support real-time interactions.

**Social bonding activities.** Promote social bonding activities, such as online events or remote volunteer opportunities.

**Share positive stories.** Find opportunities for your employees to share positive and hopeful stories. Leverage your existing employee resource groups (ERGs)—or create new ones—to provide additional social and emotional support.

Even as employers begin to return to “the new normal” and bring employees back into the workplace, supporting employee behavioral health and well-being will be an ongoing effort—one that will benefit your employees and your bottom line.



## Stay Informed

As the country continues to navigate through the impacts of the COVID-19 pandemic, MBA has developed helpful information, powerful resources and effective solutions for their clients.

Visit our website at [www.mybenefitadvisor.com](http://www.mybenefitadvisor.com) for additional support.

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