Written By
Andrew Silverio

CONTINUING COVERAGE DURING COVID-19

For the last month or so, like just about every industry, self-funded plan sponsors and those serving them have been frantically grappling with how to quickly and thoroughly address issues they've never had to encounter before.

Entire segments of our economy have shut down essentially overnight, travel has screeched to a halt, and employers are dealing with questions of a type and scope they've never seen. Against this backdrop, individuals' healthcare needs have never been more vital, while for many employers the path to ensuring they can continue to be covered has never been more wrought with pitfalls.

As self-funding consultants, we've already fielded just about any question one could imagine relating to the COVID-19 pandemic.

It is encouraging though, from a human perspective, that the most common questions we're seeing don't relate to how to comply with new federal laws, or even how to contain costs in a time when most employers are being forced to tighten their belts dramatically.

Rather, the most common and urgent inquiries we receive are all variations on the same basic issue – how can we ensure our employees can remain covered? This seemingly simple question often gets extremely complicated though, as plan sponsors are dealing with business decisions they never envisioned.

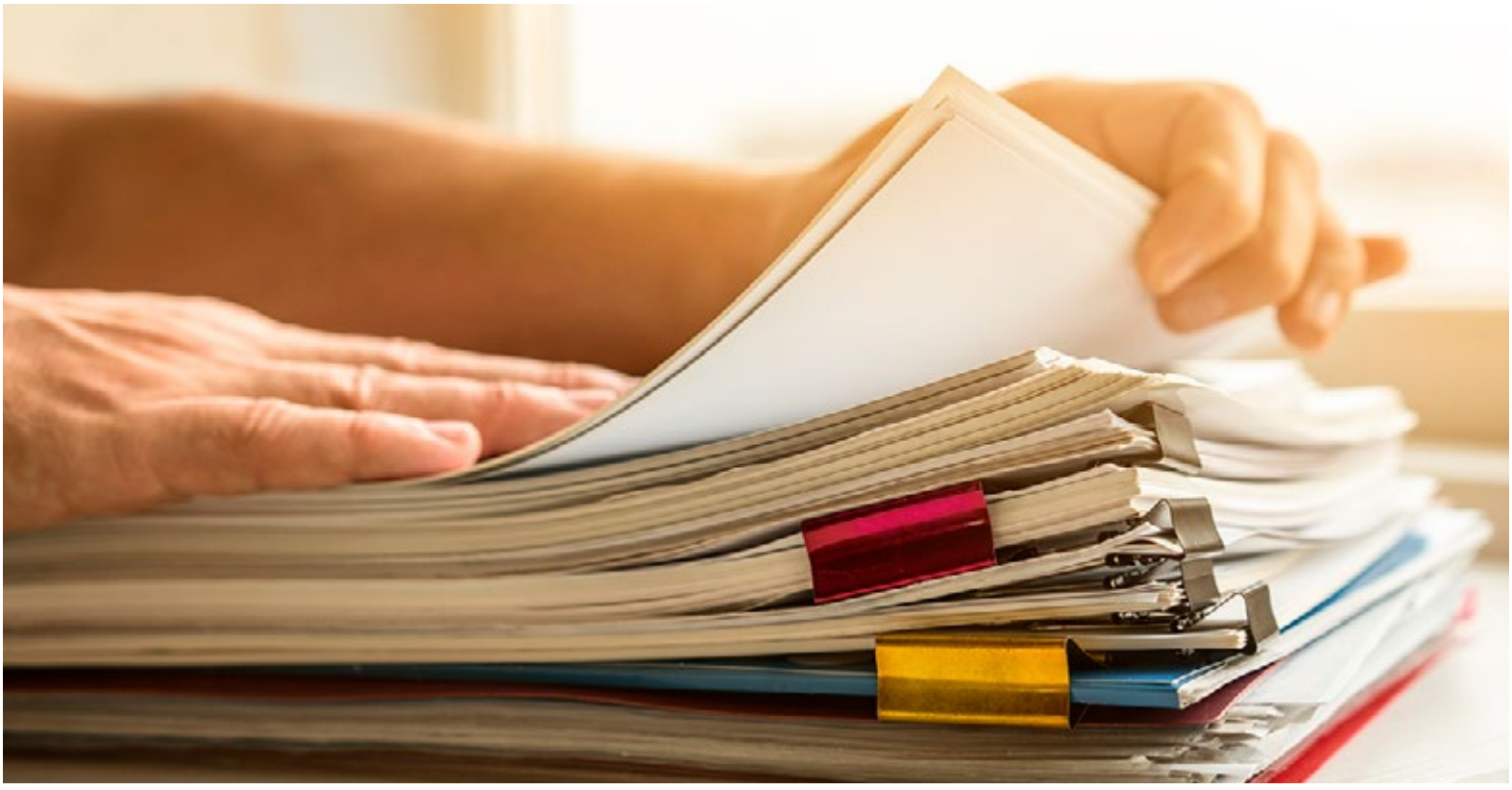
What if you have to close down completely for a month? Two months? What if you have to cut everyone's hours to be able to ensure everyone continues receiving a paycheck? What if employees are placed on leaves of absence or furloughed? Will stop-loss cover continuations of coverage?

It's very unlikely that even a well-drafted plan document is already set up to address situations like this. The first and most important item to check off the list is to ensure that the plan document allows for continuation of coverage in whatever situation you're dealing with. Just how to label that situation has become a point of confusion in itself, however.

Employers are getting hung up on terminology – do we call it a layoff or a furlough? Can we call it a leave of absence? Does this impact actively at work status? Our general guidance has been to forget about terminology – it doesn't matter.

If your plan clearly describes the events that would otherwise cause a loss of eligibility and clearly establishes that eligibility is intended to continue regardless, it doesn't matter if the break in service is called a layoff, a furlough, a leave of absence, a pastrami sandwich, etc.

Another significant source of anxiety for plan sponsors is how stop-loss carriers will treat plan changes in connection with COVID-19. Many carriers have issued releases that seem very reassuring – saying in broad terms that plans need not worry, and that stop-loss will honor



COVID-19 updates and amendments won't be required of applicable stop-loss policies.

We would caution against taking these representations too broadly, however. A reasonable interpretation of most of these releases is that carriers will honor any plan changes to the extend necessary for plans to comply with the law (namely the Families First Coronavirus Response Ace and the CARES Act).

However, most plans are contemplating changes beyond what's required by law. For example, to date there is no federal requirement to extend coverage which would otherwise be terminated after layoff or due to a reduction in hours – the only required extension of coverage under these laws would fall under a new category of FMLA leave.

There's also no federal mandate to waive cost sharing for most COVID-19 treatment, as opposed to diagnostic testing (a step many plan sponsors are taking to mirror trends in the fully-insured world). The prudent approach is to expect collaboration, but not rely on it, and take all the proactive steps that may be necessary to protect the plan and employer. ■

Andrew joined the Phia Group, LLC as attorney Third Party Liability Lawyer in the summer of 2014, dealing with a variety of issues such as Medicare recovery and Medicare COB, class action recovery, and other opportunities to recoup funds for benefit plans. In addition to conducting research into novel and developing areas of the industry, he expanded his focus into provider relations, dispute resolution, and cost containment. He now serves as the company's Compliance and Oversight Counsel, handling some of the most complex consulting issues and assisting with compliance and regulatory issues, both internal and external.

Andrew attended Berklee College of Music in Boston, earning his B.A. in professional music. He then attended Suffolk University Law School, graduating with an intellectual property concentration with distinction. There, he took the step into the healthcare realm of the legal world, serving first as an editor and content contributor, and then on the executive board of the Journal of Health and Biomedical Law. Andrew is licensed to practice in the Commonwealth of Massachusetts.