



## IMPORTANT NOTICE: COVID-19 Pandemic-Related Changes to the Plan

May 18<sup>th</sup>, 2020

### SUMMARY OF MATERIAL MODIFICATIONS TO THE Cupertino Electric, Inc. Health and Welfare Plan

*This document serves as a Summary of Material Modifications (“SMM”) to the Cupertino Electric, Inc. Health and Welfare Plan (“Plan”).*

*This SMM summarizes changes to the Plan that are the result of recent legislation and regulatory guidance addressing employee health and welfare plan benefits in response to the COVID-19 pandemic.*

*You should review this information carefully and share it with your covered dependents. Keep this information with your Summary Plan Description (“SPD”) for future reference. In the event of a conflict between the official Plan Document and this SMM, the SPD, or any other communication related to the Plan, the official Plan Document will govern.*

*Contact CEI Benefits at [benefits@cei.com](mailto:benefits@cei.com) for more information, or to request a paper copy of this document.*

#### **Overview:**

- **Coverage of Certain COVID-19 Testing Costs:** Effective from March 18, 2020 through the end of the **Public Health Emergency Period** (as defined below), the Plan will cover certain COVID-19 testing and related items and services without any cost-sharing to the extent required by the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).
- **Extensions of Certain Plan Deadlines:** The Plan will disregard the **Outbreak Period** (as defined below) for purposes of certain Plan and participant enrollment, COBRA, appeal and other deadlines, to the extent required or permitted by the May 4, 2020 final rule issued by the Departments of Labor (DOL) and the Treasury (the “**Joint Rule**”) and EBSA Disaster Relief Notice 2020-01.

#### **Plan Changes Summarized:**

##### **COVERAGE OF CERTAIN COVID-19 TESTING COSTS**

**IMPORTANT NOTE:** The following provisions only summarize the new laws addressing coverage of certain COVID-19 testing costs. Consult the Plan’s insurance carrier or third-party administrator for full details, limitations, and conditions on the testing coverage described below.

**Public Health Emergency Period.** The following provisions are effective March 18, 2020 though the end

of the **Public Health Emergency Period**, which is established by the Secretary of Health and Human Services (HHS) under Section 319 of the Public Health Services (PHS) Act. Generally, under Section 319 of the PHS Act, a public health emergency declaration lasts until the Secretary of HHS declares that the public health emergency no longer exists. The actual end date of the **Public Health Emergency Period** has not yet been determined as of the date of this SMM.

**Covered Items and Services.** During the **Public Health Emergency Period**, the Plan will provide the following coverage without cost-sharing (i.e., no deductibles, copayments, or co-insurance), prior authorization requirements, or other medical management requirements for screening and testing for COVID-19 when medically appropriate for the individual, as determined by the individual's attending healthcare provider in accordance with accepted standards of current medical practice, and to the extent required by the FFCRA and the CARES Act:

- **In Vitro Diagnostic Tests.** An in vitro diagnostic testing (e.g., nasal swab) for the detection of SARS-CoV-2 (i.e., Coronavirus) or the diagnosis of COVID-19, and the administration of such a test, that:
  - Is approved, cleared, or authorized by the Food and Drug Administration (FDA) for emergency use; or
  - The developer has requested, or intends to request, emergency use authorization by the FDA;
  - Is developed in and authorized by a State that has notified the Secretary HHS of its intention to review tests intended to diagnose COVID-19; or
  - Other tests that the Secretary of HHS determines appropriate in guidance.
- **Serological Tests.** Serological tests that are used to detect COVID-19 antibodies are also covered by the Plan to the extent they meet the requirements above for in vitro diagnostic tests.
- **Related Items and Services.** The Plan will cover items and services related to office visit, telehealth session, urgent care visit, or emergency room visit for COVID-19 diagnostics that result in an order for or administration of a COVID-19 test.
  - For this purpose, coverage will be provided only to the extent that the items or services relate to the furnishing or administration of the test or to the evaluation of such individual for purposes of determining the need of the individual for the product, as determined by the individual's attending healthcare provider.
- **Preventive and Vaccine Costs.** The Plan will also cover preventive services or vaccines for COVID-19 to the extent they relate to "qualifying coronavirus preventive services," should they become available.
  - To qualify, the item, services, or immunization designed to prevent or mitigate COVID-19 must have an "A" or "B" recommendation by the U.S. Preventive Services Task Force (USPSTF) or Centers for Disease Control and Prevention (CDC).
  - The Plan will implement changes to cover such preventive services or vaccines within 15 business days following the date on which a recommendation is made.

The coverage described above will be provided for both in-network and out-of-network providers.

**Major Medical Plan Only.** The covered items and services described above regarding COVID-19 testing apply to the Plan benefits that are considered "group health plans" (i.e., the major medical components

of the plan) that are not “excepted benefits” (e.g., dental and vision benefits) under the Patient Protection and Affordable Care Act (ACA) and Health Insurance Portability and Accountability Act (HIPAA).

### **EXTENSIONS OF CERTAIN PLAN DEADLINES**

**Deadline Extensions.** The Plan will disregard the “**Outbreak Period**” (as defined below) in determining the following periods and dates, to the extent set forth in the **Joint Rule**.

**Outbreak Period.** For purposes of the deadlines described below, the **Outbreak Period** is the period from March 1, 2020 until 60 days after the announced end of the **National Emergency Period** (or a later date announced in subsequent guidance). The **National Emergency Period** is the period resulting from the President’s Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak on March 13, 2020, and the President’s separate determination invoking a nationwide national emergency determination under the Stafford Act beginning March 1, 2020 as a result of the COVID-19 outbreak.

*\*For illustrative purposes only, the examples below use a hypothetical **Outbreak Period** end date of June 29, 2020. The actual end date of the **Outbreak Period** has not yet been determined as of the date of this SMM.*

1. Deadlines for Employee/Dependent to Request HIPAA Special Enrollment. The 30-day deadline (or 60-day deadline for loss of Medicaid/CHIP eligibility or becoming eligible for a state premium assistance subsidy under Medicaid/CHIP) for an employee or dependent to request special enrollment in the Plan under the HIPAA.

*Example (**Outbreak Period** of March 1 – June 29, 2020\*):*

- Employee waived group health coverage under the Plan.
- On March 31, 2020, employee gives birth to a child and would like to enroll herself and her newborn in the Plan (normally, a 30-day special enrollment period).
- The Plan’s 30-day special enrollment period is extended by disregarding the **Outbreak Period** (March 1, 2020 through June 29, 2020).
- Accordingly, the employee would have until 30 days after the end of the **Outbreak Period** (until July 29, 2020) to enroll herself and her child in the Plan.

2. Deadline for Plan to Provide COBRA Election Notice. The deadline for the Plan to provide a COBRA election notice to individuals who experience a COBRA qualifying event, within 44 days after the loss of group health plan coverage that resulted in the qualifying event.

*Example (**Outbreak Period** of March 1 – June 29, 2020\*):*

- Employee loses coverage under a group health component of the Plan as a result of termination of employment as April 1, 2020.
- The 44-day period to provide the employee with the COBRA election notice is extended by disregarding the **Outbreak Period**.
- Accordingly, the plan would have until 44 days after the end of the **Outbreak Period** (by August 12, 2020) to provide the COBRA election notice.

3. Deadlines for Qualified Beneficiaries to Make COBRA Elections. The 60-day deadline under COBRA

for employees and dependents who lose active group health plan coverage due to a qualifying event (e.g., termination of employment) to elect COBRA continuation coverage.

*Example (Outbreak Period of March 1 – June 29, 2020\*):*

- A participant's hours are reduced, which causes the participant to lose active group health coverage under the Plan (a COBRA qualifying event).
- The participant receives the COBRA election notice on April 1, 2020.
- The standard 60-day COBRA election period is extended by disregarding the **Outbreak Period** (i.e., until June 29, 2020).
- Accordingly, the participant has until 60 days after the end of the **Outbreak Period** (until August 28, 2020) to elect COBRA.

4. Deadlines for Qualified Beneficiaries to Pay COBRA Premiums. The COBRA deadlines for qualified beneficiaries to make the first COBRA premium payment within 45 days of their COBRA enrollment date, and to make subsequent monthly COBRA premium payments by the end of the 30-day grace period that starts at the beginning of each coverage month.

*Example (Outbreak Period of March 1 – June 29, 2020\*):*

- Employee is a COBRA qualified beneficiary who fails to make timely COBRA premium payments by the end of the 30-day grace period for March, April, May, and June 2020.
- The standard 30-day COBRA premium payment grace period is extended by disregarding the Outbreak Period.
- The employee would have until 30 days after the end of the **Outbreak Period** (until July 29, 2020) to make the COBRA premium payment for the months of March, April, May, and June.
- The employee is eligible to receive coverage under the plan during this interim period, even though some or all premium payments may not be received until July 29, 2020.
- If the employee makes a premium payment for only two months of coverage by July 29, 2020, those premiums would apply to the first two months that remained unpaid (March and April), and there would be no COBRA coverage for any month after April 2020.

5. Deadlines for Employees/Dependents to Notify the Plan of a COBRA Qualifying Event. The 60-day deadline for a COBRA qualified beneficiary to notify the Plan of a divorce/legal separation or loss of dependent status COBRA qualifying event, or for notification of an extension of COBRA because of a Social Security Administration disability determination.

*Example (Outbreak Period of March 1 – June 29, 2020\*):*

- Employee and spouse are covered under a group health plan component of the Plan, and finalize their divorce effective April 1, 2020, which causes the spouse to lose eligibility for Plan coverage.
- The 60-day period for the employee or spouse to notify the Plan of the divorce to preserve the former spouse's COBRA rights is extended by disregarding the **Outbreak Period**.
- Accordingly, the employee or spouse would have until 60 days after the end of the **Outbreak Period** (until August 28, 2020) to notify the Plan of the divorce qualifying event and preserve COBRA rights for the former spouse.

6. Deadlines to File Benefit Claims, Appeals and External Review Information. The Plan's deadline

for a participant, beneficiary, or authorized representative to file a claim for benefits, the 180-day (group health plan or disability plan) or 60-day (other plan) deadline to appeal adverse benefit determinations, and the fourth-month deadline to request external review or submit additional information related to a request for external review.

*Example (**Outbreak Period** of March 1 – June 29, 2020\*):*

- Assume that for purposes of this example, a plan (not necessarily this Plan) requires that benefit claims be submitted within 365 days of any covered item or service.
- Employee receives covered medical treatment on March 1, 2020 but does not submit the benefit claim to the plan until April 1, 2021.
- The plan's standard 365-day benefit claim filing deadline is extended by disregarding the **Outbreak Period**.
- The employee's last day to file the benefit claim is 365 days after the end of the Outbreak Period (by June 29, 2021), so the claim is therefore timely submitted.

***Potential Alternative Timeframes and Methods of Disclosure for Other ERISA Notices and Disclosures.***

In addition to the extensions described above, pursuant to EBSA Disaster Relief Notice 2020-01, the Plan and any responsible Plan fiduciary will not be in violation of ERISA for a failure to timely furnish a notice, disclosure, or document that must be furnished during the **Outbreak Period**, if the Plan and responsible fiduciary act in good faith and furnish the notice, disclosure, or document as soon as administratively practicable under the circumstances. Good faith acts include use of electronic alternative means of communicating with Plan participants and beneficiaries who the plan fiduciary reasonably believes have effective access to electronic means of communication, including email, text messages, and continuous access websites.