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Health Plan Coverage Under the Families First Coronavirus Response Act (including Special Considerations for High-Deductible Health Plan Issues)

The Families First Coronavirus Response Act (FFCRA) was signed into law by the President on March 18, 2020. A more detailed discussion of the Act is available here. The FFCRA's core healthcare coverage provisions require health insurance plans in all markets to provide coverage of COVID-19 diagnostic screening and testing, including the cost of a provider, urgent care center, emergency room visit, or telemedicine visit in order to receive testing, without any patient cost-sharing. This includes all fully insured and self-insured plans, including grandfathered plans under the Affordable Care Act (ACA). There are lingering questions about how the law will be administered (including which costs at a visit will be covered), and additional regulatory or subregulatory guidance from the enforcing agencies will be helpful as it emerges.

The remainder of this update is specific to **high-deductible health plans** (HDHPs), given the special rules applicable to such plans. As a refresher, HDHPs are plans that generally may not provide benefits for any year until the minimum deductible for that plan year is satisfied.

There are strict requirements on HDHPs that allow an individual participating in such a plan to establish a Health Savings Account (HSA) to save for health plan costs in a tax-advantaged manner. To be eligible to contribute to an HSA, the individual must be covered under an HDHP and have no disqualifying health coverage. Disqualifying coverage could be coverage that pays claims before the covered individual meets the minimum deductible required by the HSA rules (e.g., by providing coverage without cost-sharing).

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The current environment presents many questions for those maintaining an HDHP as to what coverage can/must be provided under an HDHP without cost-sharing.

What must plans cover without cost-sharing?

Pursuant to the FFCRA, generally all group health plans (other than retiree-only or excepted benefits) must cover all costs associated with screening and testing for COVID-19. Such costs may include the following:

- Costs associated with screening or testing for COVID-19 that are approved, cleared, or authorized under applicable law;
- Costs associated with administering screening and testing; and
- Items and services furnished during healthcare provider office visits, telehealth visits, urgent care center visits, and emergency room visits that result in screening or testing for COVID-19 testing, to the extent such items and services relate to the furnishing or administration of the test or to evaluation for purposes of determining the need for testing.

These items and services must be covered without any cost-sharing requirements (including deductibles, copayments, and coinsurance) and without imposition of any medical management requirements (including prior authorizations).

What may plans cover without cost-sharing?

Pursuant to IRS Notice 2020-15 (issued last week in advance of the FFCRA), an HDHP **may** cover all medical care services received and items purchased related to testing for and/or treating COVID-19 prior to satisfying any applicable minimum deductible required under the HDHP rules. This Notice establishes that a group health plan's payment of COVID-19–related expenses does not constitute disqualifying coverage, so that affected individuals may continue to make tax-advantaged HSA contributions. Since testing now must be covered from dollar one under the FFCRA, this Notice remains relevant to permit full coverage of "treatment" costs associated with COVID-19.

What about telemedicine?

As noted above, COVID-19–related screening and testing must be provided on a "dollar one" basis, without cost-sharing, including services provided through a telemedicine visit. Generally speaking, while there may be good policy reasons for encouraging broader use of telemedicine visits, there has been no legislative or other agency guidance permitting access to telemedicine without cost-sharing (outside of the limited guidance relating to preventive care and, now, COVID-19 testing and screening). While Congress may take this issue up in its next round of guidance, or the Treasury may issue more guidance permitting HDHPs to offer telemedicine services without cost-sharing, challenges remain for determining whether the services provided during a telemedicine visit fall within the scope of testing and screening for COVID-19. We will continue to follow this issue and keep you updated.

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