



## COVID-19 Update

Every individual and every employer is facing unprecedented challenges on all fronts in dealing with the COVID-19 pandemic. HPI's goal is to provide our clients and business partners with information and tools to help understand and manage the impact of evolving pandemic-related legislation on employee benefit plans. We also encourage you to reach out to your HPI Account Service Team with any additional questions or concerns that we have not yet touched upon.

### **This Compliance Alert addresses:**

- The impact of the Coronavirus Aid, Relief, and Economic Stimulus (CARES) Act on
  - Health plan design and administration
  - Paid leave under the Families First Act
- Waiving cost sharing for inpatient treatment of COVID-19
- Amending plans to incorporate new provisions

## CARES ACT

On March 27, 2020, the federal Coronavirus Aid, Relief, and Economic Stimulus (CARES) Act was enacted. The CARES Act is a sweeping piece of legislation that addresses a host of issues, including unemployment assistance, business assistance, medical supplies for fighting COVID-19 and more.

Among the provisions are clarifications and amendments to the Families First Act about which HPI advised you on March 26, 2020, as well as additional rule changes that affect the design and administration of group health plans. The CARES Act also supports some coverage mandated by various states, such as first dollar coverage for telehealth services unrelated to COVID-19 by removing barriers that would preclude Qualified High Deductible Health Plans from offering that benefit. A summary of the changes to date is below. For details about the initial provisions of the Families First Act, please refer to HPI's March 26, 2020 Compliance Alert.

## HEALTH BENEFIT PROVISIONS

### **Scope of Federally Authorized COVID-19 Diagnostic Tests**

The CARES Act broadens the scope of federally authorized COVID-19 diagnostic tests that must be covered without cost-sharing. This amendment to the Families First Act includes new tests under development for which the developer intends to request emergency use authorization from the Department of Health & Human Services (HHS), tests developed in individual states which have notified HHS of their intent to review the tests, and any other test otherwise deemed appropriate by HHS.

### **Payment of Testing Providers**

The CARES Act clarifies that testing providers are required to be paid at the network contracted or negotiated rate. In the absence of a negotiated rate, plans must pay the price posted on the provider's web site. Posting the price is a statutory requirement, and providers are subject to financial penalties for failing to do so.

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**COVID-19 Update****Coverage of Non-COVID-19 Telehealth Services under Qualified High Deductible Health Plans (QHDHPs) Allowed Before Meeting Deductibles**

Some states mandated first dollar coverage of telehealth services unrelated to COVID-19 testing or treatment in order to reduce patient exposure to the virus and alleviate pressure on health care facilities. The CARES Act further supports this approach by allowing QHDHPs to provide coverage for all telehealth services before plans deductibles are met without losing their status as Health Savings Account (HSA)-qualified HDHPs. This provision is in effect through Plan Years that begin on or before December 31, 2021.

**Accelerated Coverage of COVID-19 Preventive Services and Vaccinations**

Currently, there are no federally recommended COVID-19 preventive services or vaccines. However, when such services or vaccines become available, they must be covered without cost-sharing within 15 days of the date they receive an A or B recommendation from the United States Preventive Services Task Force (USPSTF) or a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention. Under the Affordable Care Act (ACA), all other preventive services and vaccines must be covered within 12 months following such recommendations.

**Additional Items Eligible for Reimbursement under Medical Care Reimbursement Accounts (MCRAs), Health Reimbursement Arrangements (HRAs) and Health Savings Accounts (HSAs)**

The CARES Act restores the cost of over-the-counter drugs and medicines as expenses eligible for reimbursement under MCRAs, also known as Flexible Spending Accounts (FSAs), HRAs and HSAs. In addition, the cost of menstruation care products is also eligible for reimbursement under these accounts. These provisions are retroactively effective to plan years beginning on and after January 1, 2020.

**LEAVE PROVISIONS****Confirmation of Limits on Paid Leave**

The Compliance Alert of March 26, 2020, details the provisions of the paid leave sections of the Families First Act. HHS later issued guidance in the form of FAQs about how to figure the paid leave limits.

The CARES Act codifies the maximum benefits available as follows:

**Emergency Paid Sick Leave**

- 100% of regular pay, up to \$511 per day and \$5,110 in the aggregate is the maximum paid leave available to any employee unable to work or telework because the employee:
  - Is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
  - Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
  - Is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
- Two-thirds of regular pay, up to \$200 per day and \$2,000 in the aggregate is the maximum paid leave benefit available to any employee unable to work or telework because the employee:
  - Is caring for an individual subject to a quarantine or isolation order related to COVID-19 or who has been advised by a health care provider to self-quarantine due to COVID-19 concerns;
  - Is caring for a son or daughter whose school or day care has been closed, or whose care provider is unavailable, due to COVID-19; or
  - Is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

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### **Paid FMLA**

- Two thirds of regular pay, up to \$200 per day and \$10,000 in the aggregate is the maximum paid leave benefit available to any employee unable to work or telework because the employee:
  - Is caring for a son or daughter under age 18 whose school or day care has been closed, or whose care provider is unavailable due to a public health emergency related to COVID-19;

These limits apply regardless of whether an employee has successive periods of eligibility for paid leave for different reasons. For example, an employee may be initially eligible because of a 14-day quarantine or isolation order, during which they receive Emergency Paid Sick Leave up to the maximum of \$5,110. If, a month after the order is lifted, the employee starts experiencing symptoms of COVID-19, that employee is not eligible for a second period of Emergency Paid Sick Leave under the Families First Act.

### **Eligibility for Paid Leave upon Rehire**

All employees are eligible for the Emergency Paid Sick Leave provisions in the Families First Act, without regard to length of employment.

In general, for the purposes of the Paid FMLA, an eligible employee is one who has worked for the employer for at least 30 days. The CARES Act clarified this provision to also include as eligible for the extended Paid FMLA any employee who:

- Was laid off by the employer on or after March 1, 2020,
- Had worked for the employer for at least 30 of the last 60 calendar days before the layoff, and
- Is rehired by the employer.

## **WAIVING COST SHARING FOR INPATIENT TREATMENT OF COVID-19**

As the impact of the COVID-19 pandemic continues to unfold, some insurers are waiving cost-sharing not only for testing and diagnosis of the virus in accordance with the Families First Act, but also for treatment of COVID-19. To date, there is no federal mandate for fully-insured or self-funded plans to waive cost-sharing for COVID-19 treatment; however, in HPI's March 11, 2020 communication entitled "Important Information About Coronavirus" we indicated that HPI was waiving cost-sharing not only for testing and diagnosis of the virus, but also for the outpatient treatment of COVID-19. We waived cost-sharing for outpatient treatment in accordance with local government recommendations to avoid any unnecessary exposure to the virus.

We are now providing our clients with the option to also waive cost-sharing for the inpatient treatment of COVID-19. All plans, including QHDHPs can elect this. IRS Notice 2020-15 issued on March 11, 2020, allows QHDHPs to provide benefits associated with testing for and treatment of COVID-19 without a deductible, or with a deductible below the minimum deductible (self only or family) without losing HSA-qualified status.



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### AMENDING PLANS TO INCORPORATE NEW PROVISIONS

Your HPI Account Service Team will be reaching out to you next week about incorporating both mandated and optional new COVID-19 related provisions set forth in this Alert and our March 26<sup>th</sup> Alert into your group health plans. The optional provisions you will need to advise us on are:

- Cost-sharing for inpatient treatment of COVID-19
- For QHDHPs, coverage of non-COVID-19 telehealth services before the deductible
- Leave provisions for furloughed/laid off employees in relation to the leave provisions of the Families First Act

HPI's goal, as we outlined in previous communications, is to develop a single Summary of Material Modifications (SMM) that will apply to all plans each client offers instead of issuing an SMM for each individual Plan. Based on the new rules and your decisions on the optional provisions, HPI will draft the SMM for signature. We understand that during this pandemic, some clients may not have an electronic signature on file to sign the SMM or may not have the ability to scan a signed copy back to us, in which case, we will accept an email confirmation of signature with your assurance that the SMM will be signed as soon as is practical.

Due to the urgency of updating clients' plans for COVID-19 provisions, if you have not responded to your HPI Account Service Team by **April 10, 2020**, your SMM will be drafted with the following defaults for the optional provisions:

- Cost-sharing for the inpatient treatment of COVID-19 will **not** be waived
- For QHDHPs, coverage of non-COVID-19 telehealth services will **not** be allowed before meeting the deductible
- The standard leave provisions of the Families First Act will apply

All the very best to you and yours from the HPI family in these very challenging times.

*The information contained in this Alert is based on our current understanding of how significant developments may affect group benefit plans. It should not be construed as specific legal advice or legal opinion. The contents are for general information purposes only and are not a substitute for the advice of legal counsel.*