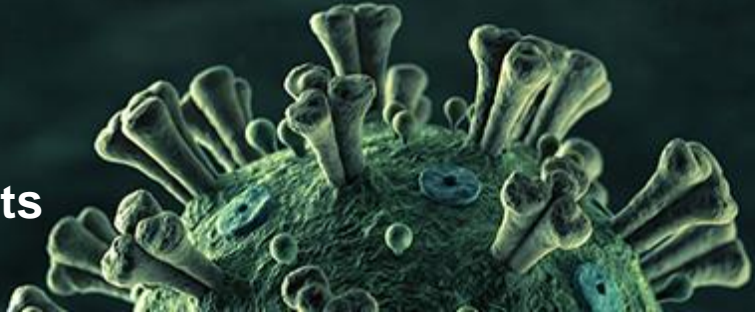




COVID-19 Latest Insights



Congress Enacts the CARES Act, Including Several Benefits-Related Provisions

On March 27, 2020, Congress enacted and the president signed into law the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act). The CARES Act is a comprehensive economic stimulus package, which (among many other things) includes loans to small businesses attempting to navigate the COVID-19 pandemic and an expansion of unemployment benefits available through states (backed by federal funding). The CARES Act also has several provisions relating to employee benefits, both on the health side and the retirement side, as well as a few miscellaneous provisions on fringe benefits (student loan repayment).

Health Plans: Telehealth

Expanding on the IRS's prior notice stating that an HDHP can cover COVID-19-related tests and coverage absent cost-sharing without adversely affecting HSA eligibility, the CARES act permits (but does not require) HDHPs to waive deductibles for all telehealth or remote care services without adversely impacting HSA eligibility. This allows HDHPs to cover telehealth with no cost-sharing, whether or not the telehealth relates to COVID-19, without impacting the plan's status as an HDHP and without impacting the HSA eligibility of those covered under the HDHP. The CARES Act does not mandate telehealth coverage (although laws in some states have been enacted recently to provide additional telehealth coverage, at least for fully insured plans in those states). This expansion on telehealth is temporary — applying to plan years beginning on or before December 31, 2021.

HSAs/HRAs/FSAs: Over-the-Counter Drugs and Menstrual Products

The CARES Act eliminates the ACA rule that employees/individuals cannot be reimbursed from their HSAs, HRAs and FSAs for over-the-counter (OTC) drugs unless the drug was accompanied by a prescription. Under the CARES Act, effective January 1, 2020, employees/individuals can reimburse themselves from those accounts for non-prescribed OTC drugs. Similarly, menstrual care products (defined to include tampons, pads, liners, cups, sponges or similar products) will be considered qualified medical expenses payable from those accounts.

Health Plans: Expansion of COVID-19 Tests Covered Under the FFCRA

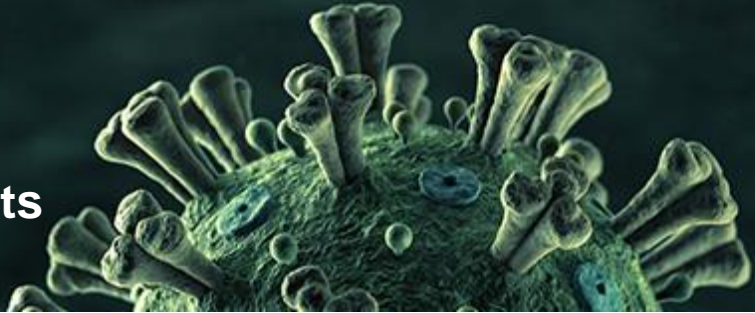
The CARES Act amends the recently enacted Families First Coronavirus Response Act (FFCRA) by expanding the types of COVID-19 tests that group health plans/carriers must cover without cost sharing, prior authorization, and other medical management requirements. Specifically, the new tests that must be covered without such restrictions include tests for which the developer has requested "emergency use authorization" under the Federal Food, Drugs, and Cosmetics Act, and tests authorized and used by a state to diagnose patients.

Health Plans: Coverage of Qualifying COVID-19 Preventive Services and Vaccines

The CARES Act also directs the relevant agencies (HHS, DOL and Treasury) to require health plans/carriers to cover any COVID-19 preventive services without cost sharing. That would include vaccines and immunizations, or any other item or service, that are determined by the CDC or the U.S. Preventive Services Task Force to prevent or mitigate



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COVID-19. This is a preemptive move to ensure that any immunizations and vaccines that are developed will be covered by the group health plan without any participant cost sharing.

Health Plans: Transparency in COVID-19 Test Pricing

The CARES Act attempts to address transparency in pricing by generally requiring providers to publicize the prices of COVID-19 tests. Group health plans and carriers, which are required to pay for the tests under the Families First Coronavirus Response Act (FFCRA), are required to reimburse the provider in accordance with the negotiated rate that it had with the provider before the COVID-19 public health emergency. If there is no negotiated rate, then it will be the publicized cash price. This relates more to the carrier and the provider, but employers may be interested in understanding the pricing of the COVID-19 tests, and how that will be handled.

Fringe Benefits: Student Loan Repayment

The CARES Act adds “eligible student loan repayments” to the list of items that can be reimbursed under an educational assistance program under IRC Section 127. “Eligible student loan repayments” are payments made by the employer, whether paid to the employee or a lender, of principle or interest on any qualified higher education loan (including undergraduate and graduate school) for the education of the employee (but not of a spouse, domestic partner or other dependent).

Student loan repayments are limited to \$5,250 (and are combined with other educational assistance provided under the Section 127 program sponsored by the employer — an employer cannot provide student loan repayment and other educational assistance in a combined amount over \$5,250). Prior to the CARES Act, Section 127 applied only to educational assistance programs (current employee education, not student loans previously incurred). Also, employees may not double dip on tax benefits — an employee may not deduct student loan repayment amounts that are reimbursed or paid by the employer. This provision is temporary, as it’s effective for payments made after March 27, 2020, and before January 1, 2021. Employers interested in this provision will need to adopt or amend a Section 127 plan document.

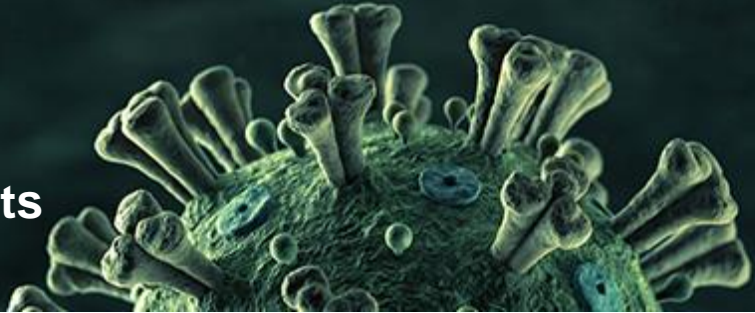
Small Business Loans and Health Insurance Premiums

NOTE: A full analysis of small business loans is beyond our scope; but employers may be interested in understanding how health insurance premiums might be addressed through small business loans.

The CARES Act includes a small business loan program (with loan forgiveness under certain circumstances) which specifically allows employers to use loan amounts for payroll support, including employee salaries (up to \$100,000); paid sick or medical leave; insurance premiums; and mortgage, rent and utility payments. Although qualifications, loan forgiveness, and other details of the loan program are beyond the benefits compliance scope, employers may be interested (and should consult outside counsel) in better understanding the loan provisions, as loans could be a source for health insurance-related premium payments during a furlough.



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Unemployment Expansion: Potential Impact on Furloughed Employees

NOTE: A full analysis of unemployment benefits is beyond our scope; but employers may be interested in understanding how a furlough may impact employees with respect to unemployment benefits.

The CARES Act creates a temporary Pandemic Unemployment Assistance program (through December 31, 2020), which is intended to provide unemployment benefits to those that have not traditionally been eligible (including furloughed employees). The Act expands benefits from 26 weeks (in most states) to 39 weeks, increases the state benefit level by \$600 for up to four months, and waives the usual one-week waiting period for unemployment benefits.

Individuals are not eligible for these expanded benefits if they have the ability to telework with pay or are receiving paid sick leave (including that provided under the recently enacted FFCRA) or other paid leave benefits (under a state law or through the employer's PTO/leave policy). An individual can qualify for the expanded benefits if they are unemployed or partially unemployed and if one or more of the following is true:

- They or a member of their household has been diagnosed with COVID-19
- They are providing care for a family or household member with a COVID-19 diagnosis
- They are the primary caregiver for a child or other household member who is unable to attend school or daycare as a direct result of COVID-19
- They are unable to reach their place of employment because of a COVID-19 related quarantine
- They are unable to work because a health care provider has advised them to self-quarantine due to COVID-19 concerns
- They have become the major support for a household because the head of household has died as a direct result of COVID-19
- They had to quit their job or their employer has closed as a direct result of COVID-19

The CARES Act provides flexibility for plan sponsors to assist their employees during this pandemic. We will continue to monitor any developments in the law, including agency guidance. Employers should consult with their advisor about any changes that they wish to make to their plan as a result of the law.

CARES Act <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>