

Employee Benefits Update

March 2020

The Impact of the COVID-19 Pandemic on Your Medical and Retirement Plans

As many of us are working remotely during the COVID-19 pandemic, we wanted to share some thoughts and observations about how the pandemic could impact the medical and retirement plans that you offer to your employees.

I. *Medical Plans*

- The costs of COVID-19 diagnostic testing: In the last 7-10 days, many states (including Maryland) have taken measures to require fully-insured medical plans that are registered in those states to waive co-pays, deductibles, co-insurance and other out-of-pocket expenses associated with COVID-19 testing.
 - If you have a fully-insured medical plan, you should check with your carrier and broker to identify which state law governs your particular policy, in order to understand whether one of these new mandates applies to you.
 - If you have a self-insured medical plan, your plan is exempt from these state laws, but you will want to contact your third-party claims administrator and your stop loss carrier, because many of them are working with their self-funded plans to also waive and fully cover these costs.
 - If you sponsor a high-deductible health plan (“HDHP”) for your employees, you should know that last week the IRS issued Notice 2020-15, which advised that HDHPs may fully cover all costs of COVID-19 diagnostic testing for a participant, even if the participant has not yet satisfied his or her annual deductible under that HDHP. This is re-assuring news to employers sponsoring HDHPs, as well as to employees who have health savings accounts (“HSAs”), whose ability to contribute to those accounts depends on the HDHP meeting all IRS requirements.
 - Under the “Families First Coronavirus Response Act” bipartisan legislation that was passed by the House in the early hours of Saturday, March 14th, all COVID-19 testing would be fully covered under group health plans, regardless of whether they are self-funded or fully-

Important Dates

March 31:

- Confirm recordkeepers have filed Forms 1099-R, if filing electronically
- File ACA information reporting returns (Forms 1094-C and 1095-C) for 2019, if filing electronically
- File Form 5330 to report excise taxes and payment for excess 2018 plan year ADP/ACP contributions (or Form 5558 for up to 6 month extension)

April 1:

- Confirm recordkeepers paid initial RMDs to participants who turned 70½ in 2019

April 15:

- File Form 8928 to report excise taxes for noncompliance with obligation to make comparable HSA contributions unless Form 7004 filed to extend filing to October 15
- Complete electronic filing with PBGC under ERISA 4010 if AFTAP is less than 80% for 2019, if not previously filed
- Process distributions of excess 402(g) deferrals under 401(k)/403(b) plan for 2019

April 30:

- Pay final 2019 comprehensive PBGC premium due to the PBGC for plans that filed an earlier estimated variable rate premium in the October 15, 2019 comprehensive filing

insured. This means that no deductibles, co-payments or co-insurance could be required, and that any pre-authorization requirements would be waived. As of March 17, 2020, the Senate has not yet passed this bill, so it has not yet been enacted.

- If you do make changes to your medical plan terms about the costs of COVID-19 diagnostic testing—whether those changes are mandated by state or Federal law, or whether you are making them voluntary—remember that any changes should be memorialized in a written plan amendment, Summary of Material Modifications, or updated Summary Plan Description.
- The costs of COVID-19 treatment:
 - At this time, there are no special rules about how medical plans should process the costs of treatment for COVID-19. Consequently, medical benefits and services for treatment of the COVID-19 virus (whether that treatment consists of prescription drugs, outpatient visits, hospitalization or otherwise) would be subject to the same terms and conditions that apply to similar types of services under your plan.
- The cost of personal protective equipment:
 - At this time, it does not appear that costs for personal protective equipment, such as gloves, masks or disinfecting supplies, would be considered medical expenses that are eligible to be reimbursed from an HSA or a health flexible spending account.
- HIPAA privacy concerns:
 - HIPAA privacy rules require covered entities (such as group health plans) and their business associates to protect the privacy and security of protected health information. In the context of the COVID-19 pandemic, HIPAA concerns in the workplace primarily will arise only if information about an individual's COVID-19 infection status is disclosed from the health plan to you, as the employer. HIPAA is NOT implicated when an individual employee voluntarily discloses his or her COVID-19 status to the employer in connection with sick leave or other employment policies. Nevertheless, as with any personal information, HR and benefits professionals should be discreet and keep any such information confidential, limiting discussion to the minimum necessary to accomplish the intended purpose of any such disclosure.
- COBRA coverage:
 - If, as a result of the COVID-19 pandemic, an employee who is covered under your group medical plan loses that coverage, because he or she is laid off from employment or experiences a reduction in hours such that he or she is no longer eligible for your group health plan, then your employee, and all of the employee's enrolled dependents, will have experienced a qualifying loss of coverage under COBRA and will be eligible to elect continuation coverage, in accordance with standard COBRA rules and procedures.
- Benefit plan election changes:
 - If an employee who is covered under a spouse's medical plan loses that coverage, either because the spouse is laid off from employment or experiences a reduction in hours such that he or she is no longer eligible for their group health plan, then your employee may have experienced a qualifying change in status that would permit him to change his benefit elections under your plan, as long as those election changes are consistent with the change in status.

II. *Retirement Plans*

- Hardship distributions:
 - Hardship distributions from tax-qualified retirement plans, such as 401(k) plans and 403(b) plans, typically can only be made if they are for expenses for certain limited purposes (*e.g.*, medical

expenses, funeral expenses, amounts needed to prevent foreclosure or eviction, funeral expenses, and certain tuition payments), which cannot be satisfied from any other sources. At this time, the IRS has not issued any guidance relaxing these rules to the extent that a participant experiences some financial strain as a result of the COVID-19 pandemic, but does not otherwise qualify for a hardship distribution.

- Company contributions to retirement plans:
 - Employers looking to ease the cash flow crunch of continuing to pay employees who are on extended leaves of absence for quarantine or other COVID-19 related reasons may wish to consider adjusting the level of company contributions, such as matching or nonelective profit sharing contributions, to their retirement plans. This typically requires a formal, written plan amendment and a Summary of Material Modifications, unless your plan terms already provide that your contribution level is fully discretionary.
 - However, if you sponsor a “safe harbor” plan, be aware that there are specific compliance considerations—and advance notice obligations—that are likely to apply if you are interested in implementing a reduction to your safe harbor contributions in the middle of your plan’s fiscal year.
- Participant investment education:
 - Given the extreme market volatility in the last few weeks, your retirement plan participants may be anxious about the security and investment of their retirement funds. Consider reaching out to your plan’s recordkeeper for educational material about investment education on topics such as the importance of diversification, asset allocation, and long-term investment strategies.



We will continue to monitor the fast-moving developments and government guidance relating to the COVID-19 pandemic on your employee benefit plans. If you have any questions, please feel free to contact any member of our Employee Benefits and Executive Compensation Group below.



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