



Agencies Issue Further Guidance on COVID-19

The Department of Labor, Department of Health and Human Services, and the IRS (the “Agencies”) have issued Frequently Asked Questions #43 (“FAQs”) regarding implementation of the Families First Coronavirus Response Act (the “FFCRA”), the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), and other health coverage issues related to COVID-19.

Background. The FFCRA generally requires group health plans and health insurance issuers offering group or individual health insurance coverage to provide benefits for certain items and services related to testing for the detection of COVID-19 when those items or services are furnished on or after March 18, 2020, and during the “applicable emergency period.” Among other things, the FAQs clarify that self-insured group health plans, as well as insured plans, are required to cover those tests: (i) that are approved, cleared, or authorized under the Federal Food, Drug, and Cosmetic Act; (ii) where the developer has requested, or intends to request, emergency use authorization under the Food, Drug, and Cosmetic Act; (iii) that have been developed in, and authorized, by a State that has notified HHS of its intention to review tests intended to diagnose COVID-19; and (iv) that the Secretary of HHS determines are appropriate.

FAQs. The FAQs explain that COVID-19 testing for “surveillance or employment purposes” is not covered under the FFCRA testing coverage requirement, and that “Testing conducted to screen for general workplace health and safety (such as employee “return to work” programs), for public health surveillance, or for any other purpose not primarily intended for individualized diagnosis or treatment of COVID-19 or another health condition is beyond the scope of FFCRA.”

Notice requirements. The Agencies previously announced that they will not commence any enforcement action if an employer does not provide required notices to employees (such as the advance notice of a material modification or a revised Summary of Coverage and Benefits), if such modification provides increased coverage that is related to the diagnosis and/or treatment of COVID-19. The latest FAQs state that these advance notification requirements will also not apply if a plan or issuer reverses the modifications once the COVID-19 public health emergency or national emergency declaration is no longer in effect, if the plan or issuer had previously notified participants, beneficiaries, or enrollees of the general duration of the additional benefits coverage, and notification is given within a reasonable time in advance of the reversal of the modifications.

Mental Health Parity and Addiction Equity Act. The Mental Health Parity and Addiction Equity Act (“MHPAEA”) requires that the financial requirements (e.g., coinsurance and copays) and treatment limitations (e.g., visit limits) imposed on mental health or substance use disorder benefits cannot be more restrictive than the predominant financial requirements and treatment limitations that apply to substantially all medical/surgical benefits. The Agencies have announced that, generally speaking, the required coverages under the FFCRA will not be taken into account in determining compliance with the MHPAEA.

Wellness programs. With regards to wellness programs, a plan or issuer may waive a standard for obtaining a reward (including any reasonable alternative standard) under a health-contingent wellness program if participants or beneficiaries are facing difficulty in meeting the standard as a result of circumstances related to COVID-19. However, to the extent a plan waives a wellness program standard as a result of the COVID-19 public health emergency, the waiver must be offered to all similarly situated individuals.

Individual coverage health reimbursement arrangements (“ICHRA”). Individual coverage health reimbursement arrangements (“ICHRA”) reimburse employees and their dependents for their health care expenses (including health insurance premiums), up to a maximum dollar amount that the employer makes available each year. Previously, employees had to be provided with a notice, generally at least 90 days before the start of the plan year, that included information about requirements and the terms of the ICHRA, and certain consequences of accepting or not accepting the ICHRA coverage. This 90-day requirement has been waived during the emergency period. However, the Agencies “encourage employers affected by the COVID-19 pandemic to consider whether they can provide the individual coverage HRA notice at least early enough in advance of the first day on which the individual coverage HRA may take effect so that eligible employees have sufficient time to read and understand the notice, and to make an informed decision whether or not to enroll in the individual coverage.”

Additional guidance. The FAQs also discuss balance billing, telehealth and remote care services, and provide further information on covered testing.

The FAQs can be found at: <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-43.pdf>

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