

Harter Secrest & Emery LLP

ATTORNEYS AND COUNSELORS

EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION

FAMILIES FIRST CORONAVIRUS RESPONSE ACT REQUIRES GROUP HEALTH PLANS TO COVER COVID-19 TESTING WITH NO COST-SHARING

On March 18, 2020, President Trump signed the Families First Coronavirus Response Act (HR 6201) (the “Act”). In addition to requiring employers with fewer than 500 employees to provide paid family and emergency leave, the Act requires group health plans and health insurance issuers offering group or individual health insurance to provide coverage with no cost-sharing for COVID-19 testing services beginning March 18, 2020. Some states had previously taken action to require insurance carriers to provide such coverage (for example, New York; see <https://www.governor.ny.gov/news/governor-cuomo-announces-new-directive-requiring-new-york-insurers-waive-cost-sharing>), but those requirements did not apply to self-insured ERISA-covered group health plans. The Act applies to self-insured ERISA-covered plans, including plans that are “grandfathered plans” under Affordable Care Act rules. Self-insured plans that are structured to qualify as “retiree-only” plans¹ technically are not subject to the Act’s requirements.

The Act requires that a health plan provide coverage without any cost-sharing (including deductibles, copayments and coinsurance), prior authorization, or other medical management requirements, for COVID-19 diagnostic products that are approved, cleared, or authorized under specific sections of the federal Food, Drug, and Cosmetic Act, along with the administration of those diagnostic products. Plans must also cover on a cost-free basis items and services provided to an individual during health care provider office visits (including telehealth visits), urgent care center visits, and emergency room visits that result in an order for or administration of a covered COVID-19 test, to the extent that those items and services relate to furnishing or administration of the test or evaluation of the individual to determine whether they need the test. For example, if an individual has an office visit for a broken arm and during that visit is also tested for COVID-19, the COVID-19 test and professional services related to the test would be covered at no cost, while the services for the broken arm would be subject to normal plan cost-sharing requirements.

For employers with insured group health plans, the insurance carrier will need to address compliance with the Act (as well as any applicable state law requirements). Self-insured employers should contact their claims administrator to ensure that the claims administrator is prepared to begin immediately administering claims in accordance with the new requirements, and should consider immediately communicating the benefit change to plan participants (including those covered through COBRA).

¹ “Retiree-only” plans are separate plans that cover fewer than two active employees. Retiree-only plans are not subject to many Affordable Care Act requirements.

Practice Group Leader
Paul W. Holloway

Health and Welfare
Thomas J. Hurley
John W. Brill

Counsel
Leslie E. DesMarteau
Lisa G. Pelta
Larry W. Rudawsky
Joseph E. Simpson

Associates
Amanda M. Karpovich
Paige N. Monachino
Crosby A. Sommers

Benefits
Litigation Counsel
Megan K. Dorritie
Erika N. D. Stanat

Retirement
Mark R. Wilson

Executive Compensation
Christopher M. Potash

As noted in our prior [LEGALcurrents®](#), under recent IRS guidance, coverage of COVID-19 testing and treatment before the deductible is satisfied under a high deductible health plan will not cause an individual to be ineligible for health savings account contributions.

If you are interested in more information about the Families First Coronavirus Response Act, please contact any member of the [Employee Benefits and Executive Compensation](#) Group at 585.232.6500, 716.853.1616 or visit www.hselaw.com.

Attorney Advertising. Prior results do not guarantee a similar outcome. This publication is provided as a service to clients and friends of Harter Secrest & Emery LLP. It is intended for general information purposes only and should not be considered as legal advice. The contents are neither an exhaustive discussion nor do they purport to cover all developments in the area. The reader should consult with legal counsel to determine how applicable laws relate to specific situations. © 2020 Harter Secrest & Emery LLP

