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IRS ISSUES GUIDANCE ON COVID-19 TESTING AND TREATMENT FOR HSA-COMPATIBLE HIGH DEDUCTIBLE HEALTH PLANS

On March 11, 2020, the Internal Revenue Service (“IRS”) issued Notice 2020-15 (the “Notice”), which provides good news for sponsors of, and participants in, health savings account (“HSA”) compatible-high deductible health plans (“HDHPs”). Citing the “unprecedented public health emergency posed by COVID-19, and the need to eliminate potential administrative and financial barriers to testing for and treatment of COVID-19,” the IRS announced that an HDHP will not lose its status as an HDHP solely because it provides first-dollar coverage (i.e., coverage before satisfaction of the deductible) for medical care services and items purchased related to testing for and treatment of COVID-19.

As background, under long-standing IRS rules, an HDHP may not provide coverage for medical services or supplies before the participant satisfies a minimum deductible, unless the service or supply is “preventive.” If the plan provided coverage for non-preventive services or supplies before the deductible is satisfied, the plan would constitute “disqualifying coverage” for HSA purposes. That would mean that participants covered by the plan could not establish HSAs and generally could not make tax-free contributions to existing HSAs.

With the recent wave of COVID-19 cases hitting the United States, the question emerged as to whether a COVID-19 screening test would constitute a “preventive” service, allowing it to be covered by an HDHP before satisfaction of the deductible. The issue became more prevalent when certain states, such as New York and California, required insurance carriers to pay for the full cost of COVID-19 testing before the deductible. Did that mean that in those states, all insured plans ceased to qualify as HDHPs?

The Notice provides welcome relief in that it allows HDHPs to provide first-dollar coverage for COVID-19 testing. It goes even further and allows HDHPs to provide first-dollar coverage for treatment of COVID-19. Notably, the Notice does not require plans to implement these rules. Self-insured employers can decide for themselves whether to voluntarily provide first-dollar coverage for testing and treatment of COVID-19. Keep in mind, though, that a self-insured employer may be restricted by the limitations of its claims administrator’s systems, and so a self-insured employer will want to discuss the capabilities of its claims administrator before implementing any changes. Any changes should be formally captured in the plan’s governing documents; this is particularly important for plans that have stop-loss coverage, as generally a stop-loss carrier will only provide protection for claims payable under the terms of the plan.

Employers with insured HDHPs will have to follow whichever approach their insurance carrier decides to take. With this Notice, employers with insured HDHPs can rest assured that if their carriers decide to provide first-dollar coverage for COVID-19 testing and treatment, their plans will not lose their status as HDHPs.

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