

March 19, 2020

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Yesterday, Congress passed the Families First Coronavirus Act and President Trump signed it into law.

Plans Must Cover Cost of Testing

The Act requires all health plans to pay 100% of the cost of coronavirus testing, including the accompanying facility and professional fees. Patients do not need to get prior authorization to get tested. This mandate applies whether a plan is insured or self-funded, and whether it is grandfathered or non-grandfathered. It also applies to Medicare and Medicare Advantage plans. Out-of-network services are not exempt.

The Act applies to all testing performed from March 18, 2020 through December 31, 2020.

TRUSTEE ACTION REQUIRED

Trustees should amend their health plans to comply with the new requirement. In order to cover covered persons who may already have undergone coronavirus testing, the Trustees may want to use an earlier effective date. If so, we recommend January 13, 2020, the date the first U.S. patient was identified, and a sunset date of December 31, 2020.

The costs of treating a covered person who contracts COVID-19 (the disease caused by the coronavirus) is not addressed by the Act, so those charges would be paid the same as any other illness.

Trustees may also want to consider amending their plans to cover:

- Coronavirus vaccines. If and when a vaccine becomes available, existing plan rules would apply. If a plan wishes to cover the vaccine, but does not currently cover all immunizations, there would need to be an amendment.
- Telehealth visits with primary care physicians or as offered through the PPO network. Many plans have already added third-party telemedicine visits, and Trustees may or may not want to expand that coverage at least for the remainder of 2020.

New Emergency Paid Sick Leave Requirement for Employers

Covered employers (those with fewer than 500 employees) are required to immediately provide employees who are unable to work (or telework) with up to 80 hours of paid sick leave (or the equivalent of two weeks of hours for part-time employees) for use under the following circumstances:

- The employee is quarantined or self-isolating due to a recommendation or order by a health authority or a health care provider because (a) the employee has been exposed to coronavirus, or (b) the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- The employee is caring for an individual who is quarantined or self-isolating due to a recommendation or order by a health authority or a health care provider; or
- The employee is caring for his or her child who is under 18 years old because the school or place of care has been closed, or the childcare provider is unavailable, due to coronavirus precautionary measures.

Paid sick leave must be provided at the employee's regular rate of pay, up to a maximum of \$511 per day, or \$200 per day if the employee is caring for someone else.

The benefit period for the emergency sick leave requirement begins 15 days from the March 17, 2020 enactment date and ends on December 31, 2020.

New FMLA Requirement for Employers With Fewer Than 500 Employees

For leave extending beyond the two weeks covered by the emergency leave requirement, the Act also expands the Family and Medical Leave Act (FMLA) in the event of a "public health emergency."

The FMLA section of the Act requires covered employers (those with fewer than 500 employees) to allow 12 weeks of FMLA leave for employees who have been employed for 30 days. The first two weeks (10 working days) can be unpaid, although employees may elect to use other paid benefits to cover it. Unlike normal FMLA leave which is unpaid, the remaining time must be paid at 2/3 the employee's regular rate, but not to exceed \$200 per day or \$10,000 total.

The FMLA leave under this extended provision can be used when the employee is unable to work (or telework) due to a public health emergency with respect to the coronavirus for one of the following reasons:

- The employee is quarantined or self-isolating due to a recommendation or order by a health authority or a health care provider because of the (a) exposure of the employee to coronavirus, or (b) experiencing symptoms of COVID-19 and seeking a medical diagnosis; or
- To care for a child of the employee who is under 18 years old if the elementary or secondary school or place of care has been closed, or the childcare provider of the child is unavailable, due to a public health emergency.

Unlike under the emergency leave provisions, caring for someone else who is self-isolating does not qualify an employee of the extended FMLA leave. The Act allows subsequent regulations to exempt small businesses with fewer than 50 employees when it would jeopardize the viability of the business.

There is a December 31, 2020 sunset date for the FMLA expansion provision.

TRUSTEE ACTION REQUIRED

The emergency paid leave and FMLA extension provisions are directed at employers and do not directly affect health plans. However, Trustees may want to consider adopting rules protecting the eligibility of participants who are unable to work due to the coronavirus pandemic, but who are not being treated for the disease itself. Employees who are self-isolating or whose employers cannot provide work due to their compliance with public health directives, will not otherwise qualify for eligibility protection due to disability.

Depending on the Plan's eligibility rules, Trustees could:

- Allow affected employers to self-pay at a reduced rate; or
- Temporarily reduce eligibility requirements for affected employees.

Any amendments adopted for this purpose should clearly define which category of employees will qualify for the protections. For example, Trustees need to determine if the reduced self-pay rates or eligibility requirements will apply only to participants who were eligible at the time the coronavirus emergency began, or to participants who have been eligible at some time prior (e.g., six months).