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Families First Legislation Requires First Dollar Coverage for COVID-19 Testing

Effective March 18, 2020, group health plans and health insurance policies are required to pay for COVID-19 testing and related health provider visits, without imposing any cost sharing requirements, such as a deductible, copayment or coinsurance. In addition, the plan or issuer cannot require prior authorization or apply other medical management requirements for a covered individual to receive such products or services. This new requirement is part of the Families First Coronavirus Response Act enacted on March 18, 2020.

The following products and services are included in this mandate:

1. In vitro diagnostic products for the detection of SARS-CoV-2 or the diagnosis of the virus that causes COVID-19 so long as such products have received appropriate approval, clearance or authorization by the FDA.
2. Items and services furnished to an individual during health care provider office visits (whether in person or telehealth visits), urgent care center visits and emergency room visits that "result in an order for or administration of an in vitro diagnostic product [described above], but only to the extent such items and services relate to the furnishing or administration of such product or to the evaluation of such individual for purposes of determining the need of such individual for such product."

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Significantly, the Act does not require first dollar coverage for *treatment* of individuals who are diagnosed with COVID-19 or SARS-CoV-2.

The Internal Revenue Service earlier issued guidance (Notice 2020-15) that allows a participant who is enrolled in a high deductible health plan ("HDHP") to make contributions to a Health Savings Account even if the HDHP provides first dollar COVID-19 testing and treatment. In the absence of this relief, an HDHP could not offer this first dollar coverage without impairing the participant's right to contribute to an HSA. This is because eligibility to contribute to an HSA is tied to the HDHP requiring that the annual deductible must be met before the HDHP coverage starts, except for preventive care.

The relief provided by Notice 2020-15 does not extend to telehealth visits, unless the telehealth visit is related to testing or treatment of COVID-19. This has created a practical issue for employers whose telehealth provider is not set up to distinguish between telehealth visits for COVID-19 or other purposes. We have brought this issue to the attention of IRS officials and hope that the relief provided by Notice 2020-15 will be expanded so that telehealth visits can be provided without first meeting the deductible and not impair the ability to contribute to the HSA.

The IRS has created a section on its website for Coronavirus-related tax matters.

If you have any questions regarding the Families First Coronavirus Response Act or other Employee Benefits issues, please do not hesitate to contact Patty Cain, Linda Hoseman or your Neal Gerber Eisenberg attorney.

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