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Families First Coronavirus Response Act: From a Benefits Perspective

Law and the Workplace Blog on **March 19, 2020**

On March 18, 2020, the Senate passed and the President signed into law the Families First Coronavirus Response Act (the "Families First Act" or the "Act) which was first drafted and passed by the House earlier in the week. As noted in our Law and the Workplace summary of the Act, the new Act contains many important provisions regarding expanded family and medical leave and emergency paid sick leave as they relate to COVID-19. The Families First Act, however, does not stop there. It also mandates coverage of testing for COVID-19 without cost-sharing, prior authorization, or other medical management requirements.

The Act requires that both group health plans (including grandfathered plans) and health insurance issuers in the group and individual market cover the following:

- In vitro diagnostic products for the detection of SARS–CoV–2 or the diagnosis of the virus that causes COVID–19 that are approved, cleared, or authorized under the relevant provisions of the Federal Food, Drug, and Cosmetic Act.
- The administration of such in vitro diagnostic products.

Further, plans and issuers must provide coverage for all items and services furnished to an individual during a health care provider office, urgent care center, or emergency room visit that result in the ordering of the testing, the furnishing or administration of the testing, or the evaluation of an individual to determine whether testing is needed. Other notable requirements of this coverage include the following:

- The items and services must be covered to the extent they relate to the furnishing or administration of the testing or to the evaluation of the individual to determine the need for testing.
- The coverage must be provided without cost-sharing, including deductibles, copayments and coinsurance.

- Moreover, no prior authorization or other medical management requirements can apply.
- Office visits include so-called “telehealth” visits. (This is important given the rise in telehealth utilization due, in part, to fear over the spread of the virus.)

The Act covers only testing and diagnostics, suggesting that plans can continue to impose deductibles and other cost-sharing requirements for treatment of COVID-19. Of course, plan sponsors can elect to waive cost-sharing for treatment. (See our blog regarding recent IRS guidance permitting a high deductible health plan to waive deductibles for COVID-19 testing and treatment, without affecting its status as a high deductible plan.) Also, some state legislatures have proposed laws which, if enacted, would prohibit cost-sharing under covered plans with respect to treatment.

Some uncertainty remains as to how far the Act’s coverage mandate extends, including, for example, the following:

- The scope of the provision on telemedicine, including, for example, whether telemedicine visits outside the plan’s existing telemedicine program must be covered. (As the law is drafted broadly, the answer appears to be yes.)
- Whether out-of-network claims must be covered without cost-sharing. (The law is drafted broadly without exception for out-of-network services.)
- Whether retiree only plans are exempt from the requirements. (As we saw in connection with the passage of the Affordable Care Act, there was a fairly drawn out history related to the application of this exception.)

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For more information about the paid sick and family leave requirements of the Act, see our Proskauer Law and the Workplace blog. For more information about tax credits available to employers providing this leave, see our Proskauer Tax Talks blog.

Proskauer’s cross-disciplinary, cross-jurisdictional Coronavirus Response Team is focused on supporting and addressing client concerns. Visit our Coronavirus Resource Center for guidance on risk management measures, practical steps businesses can take and resources to help manage ongoing operations.

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