

COVID-19 Plan Administrative Guidance Overview

COVID-19 Testing						
Guidance	Effective	Ends	Optional or Mandatory	Plan Amendment Required	Notes	Document
Cover all COVID-19 diagnosis & testing	3/18/2020	When the applicable emergency period ends; however, state laws may mandate a longer period ⁽¹⁾	Mandatory	Yes	All plans are required to cover COVID-19 testing with no cost sharing or prior authorization requirement, including out-of-network coverage. Plans may choose to cover treatment at no cost sharing as well. Includes elimination testing for other respiratory illnesses such as FLU, RSV, etc. Must cover in all settings covered by the plan including office visit, telemedicine, urgent care, and emergency room. ⁽¹⁾	A Coronavirus Update for Employers
Notification of Relief and Extension of Timeframes						
HIPAA Special Enrollment COBRA Qualifying Event COBRA Coverage Election COBRA Premium Payment Claims & Appeals Filing	3/1/2020	60 days after the end of the Outbreak Period	Mandatory ⁽²⁾	Yes	Recommend providing Participant FAQs to individuals in their COBRA election period as of 3/1/20 and any participant who experienced a COBRA qualifying event since 3/1/20. Applies to ERISA plans, including a health FSA run-out, HRA claims filing and disability claims. Employers have a fiduciary responsibility to let participants know. Non-federal governmental plans are "encouraged to comply". Since these are short-term, temporary amendments, it may be reasonable to rely on the Participant FAQs as the summary of material modification for the affected summary plan descriptions. Due to the length of the Outbreak Period, many vendors have issued model amendments.	COVID-19 English FAQs Plan Administration Relief

Run-out	3/1/2020	60 days after the end of the Outbreak Period	Mandatory	No, because required	As mentioned under claims and appeals, the run-out period is extended (the timeframe after a plan year ends to file claims), because of the Outbreak Period, if run-out began, overlapped or ended 3/1/2020 or after.	
---------	----------	--	-----------	----------------------	---	--

Qualified Status Change Rules

Guidance	Effective	Ends	Optional or Mandatory	Plan Amendment Required	Notes	Document
<p>Amnesty QLE (all)</p> <p>Permit any new election (employee and/or dependents)</p> <p>Permit coverage change option</p> <p>Revoke Coverage option</p>	5/12/2020 ⁽³⁾	12/31/2020	Optional	Yes	An employer can choose whether to allow changes to Medical, Dental, Vision and health and dependent care FSAs, all, none or some. These changes should be confirmed with carrier (including stop-loss) prior to implementation. Dropping coverage does require an employee to attest that they have enrolled or will immediately enroll in other health coverage.	IRS QLE and FSA Relief
<p>Amnesty QLE (FSA only)</p> <p>Permit new election</p> <p>Revoke election</p>	For FSA plan years ending during 2021		Optional	Yes	<p>An employer can choose whether to allow election changes to health and/or dependent care FSAs.</p> <p>We believe employers can prohibit revoking coverage below the amount(s) already reimbursed.</p>	CAA 2021 FSA Relief
Health FSA Annual Carryover Limit	1/1/2020	N/A	Optional	Possibly	Effective for 2020 plan year, the carryover maximum will be 20% of the overall health care FSA salary reduction amount (\$550 for 2020), but see <i>Unlimited FSA Carryovers below</i> . Amendment needed if document specifies carryover amount.	
Unlimited FSA Carryovers	<p>From 2020 to 2021 plan year</p> <p>From 2021 to 2022 plan year</p>		Optional	Yes	An employer can amend Health and/or Dependent Care FSAs to permit participants to carry over their <u>entire</u> unused FSA balances.	CAA 2021 FSA Relief
FSA Extended Grace Periods	For plan years ending in 2020 and/or 2021		Optional	Yes	FSAs may allow for grace periods of up to 12 months for plan years ending in 2020 and/or 2021.	

Modified Dependent Care FSA Age Limit	Varies (see notes)	Optional	Yes	<p>Applies to two plan years:</p> <ul style="list-style-type: none"> Year 1 – The last Dependent Care FSA plan year with annual enrollment completed by January 31, 2020 Year 2 – The following plan year <p>The age limit increases to 14 for a child who ages out during Year 1 for the remainder of that plan year.</p> <p>If an employee has an unused balance at the end of Year 1 and a child who will age out during Year 2, the unused amount carries over to Year 2. The age limit for that child increases to 14 for the Year 2 plan year, but <u>only</u> for the carryover amount. The employee cannot use new Year 2 elections for expenses incurred after the child ages out.</p>	
Health FSA Spend-Down Feature	For participants who terminate Health FSA participation during 2020 and/or 2021	Optional	Yes	<p>An employer may permit employees to spend down their remaining Health FSA balance for expenses incurred after participation terminates through the end of the plan year (including any applicable grace period).</p> <p>An employer must still offer COBRA if participation terminates due to a qualifying event.</p> <div style="border: 1px solid black; padding: 5px;"> <p>Note: A spend-down feature already exists for Dependent Care FSAs (with no expiration date), although employers rarely adopt it.</p> </div>	

Health Savings Accounts

Guidance	Effective	Ends	Optional or Mandatory	Plan Amendment Required	Notes	Document
1st Dollar coverage of COVID testing, RSV, FLU, etc.	3/18/2020	After public health emergency period ends (April 21, 2021 unless extended)	Optional for testing	Yes	All plans are required to cover testing with no cost share as stated above. HDHPs can cover testing and treatment prior to statutory deductible being met without causing an HSA conflict. Underlying HDHP should be amended.	A Coronavirus Update for Employers
Telemedicine services	1/1/2020	12/31/2021 (later for non-calendar year plans; see notes)	Optional	Possibly	The CARES Act exempts all telemedicine and other remote care benefits from conflicting with HSAs for HDHP plan years beginning on or before 12/31/21. This permits an employer to cover all telemedicine visits as no cost or below fair market value cost before a participant has met the applicable minimum statutory HDHP deductible during this relief period without jeopardizing the participant's ability to make or receive HSA contributions. State laws, including Texas, require insurers to cover telehealth the same as an in-person visit would be covered, and CMS "encourages non-federal governmental entities to ensure access at no cost-sharing".	A Coronavirus Update for Employers

FFCRA Leave

Guidance	Effective	Ends	Optional or Mandatory	Plan Amendment Required	Notes	Document
<p>Emergency Paid Sick Leave (EPSL)</p> <p>Emergency Family & Medical Leave Expansion Act (EFMLEA)</p>	4/1/2020	<p style="text-align: center;">12/31/2020⁽⁴⁾</p> <p>Employers may choose to extend through 3/31/2021</p>	Mandatory	N/A	<p>Applies to private employers less than 500 employees and state and local governmental employers of any size. Federal employers of any size are subject to EPSL, but most are not subject to EFMLEA.⁽⁵⁾</p> <p>There are 6 Qualifying Purposes for EPSL. EPSL includes up to 80 hours paid leave.</p> <p>EFMLEA is available for up to 12 weeks of paid leave, after a 10-day elimination period. EFMLEA is only available for school or day care/provider closure or unavailability (including summer camp).</p>	A Coronavirus Update for Employers

Over the Counter without Prescription

OTC without Prescription	1/1/2020	N/A	Optional ⁽⁶⁾	Yes	<p>HSAs, FSAs and HRAs can now cover OTC drugs and other eligible medical supplies without a written prescription.</p>	A Coronavirus Update for Employers
--------------------------	----------	-----	-------------------------	-----	--	--

- ⁽¹⁾ Testing with no cost-share is only required until the announced end of National Emergency or one year from effective date if not announced. Testing should be covered if there has been exposure to a confirmed case or the person has potential COVID-19 symptoms. Covered testing includes all diagnosis, testing, vaccines, related facility fees and other charges, including antibody testing. A doctor's order may still be necessary to be tested. *NOTE: The EEOC does not permit employers to require antibody testing before allowing employees to enter the workplace. Requiring antibody testing before an employee can enter the workplace is an ADA violation.*
- ⁽²⁾ CMS has encouraged non-federal governmental plans to provide the same or similar relief. Church plans are not subject to COBRA unless they have elected to be treated an ERISA plan; however they do need to comply with other provisions.
- ⁽³⁾ Generally, changes must be prospective; however, as a reprieve for employers who permitted impermissible exceptions to normal Qualified Life Event (QLE) rules prior to 5/12/20, the notice permits plans to retroactively treat impermissible exceptions as amnesty QLEs.
- ⁽⁴⁾ The employer may continue to claim tax credits for paid leave during the extended period by filing IRS Form 941 for 1st quarter of 2021 by 4/30/21.
- ⁽⁵⁾ Small employers under 50 employees who are normally exempt from FMLA are not exempt from EFMLEA. Employers with fewer than 50 employees may claim an exemption from Qualifying Purpose #5 of EPSL and/or EFMLEA if an authorized officer has determined the business would be in jeopardy due to specific criteria. Guidance issued allows employers flexibility in handling their health care providers and emergency responders.
- ⁽⁶⁾ Over-the-counter (OTC) drugs are now reimbursable without a written prescription; however, an employer has the option to limit reimbursement under a health FSA or HRA. Most vendors appear to be making this change unless advised otherwise by plan sponsor.

This document and any recommendations, analysis, or advice provided by Marsh & McLennan Agency LLC (collectively, the "MMA analysis") are not intended to be taken as advice regarding any individual situation and should not be relied upon as such. The information contained herein is based on sources we believe reliable, but we make no representation or warranty as to its accuracy. Marsh & McLennan Agency LLC shall have no obligation to update the MMA Analysis. By accepting this publication, you agree to hold Marsh & McLennan Agency LLC and its affiliates harmless from all liability to you, your employees or any other party arising out of this publication or any matter contained herein. Any statements concerning medical or legal matters are based solely on our experience as insurance brokers and risk consultants and are not to be relied upon as medical or legal advice, for which you should consult your own professional advisors. Any modeling, analytics, or projections are subject to inherent uncertainty, and the MMA Analysis could be materially affected if any underlying assumptions, conditions, information, or factors are inaccurate or incomplete or should change.

© 2021 Marsh & McLennan Agency LLC. All Rights Reserved