



March 27, 2020

CARES Act Clarifies Telehealth Coverage for High Deductible Health Plans

Earlier this week the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) passed the Senate and today has passed the House. President Trump has indicated that he will immediately sign the CARES Act. The Act makes numerous employee benefit changes, one of which is specifically allowing telehealth coverage for high deductible health plans (“HDHP”).

HDHP Background

As background, among the requirements to qualify as an HDHP eligible individual is that the individual be covered under an HDHP and have no disqualifying health coverage. An HDHP may not provide benefits for the year until the minimum deductible for that year is satisfied. Several exceptions exist, including an exception for programs that do not provide significant benefits in the nature of medical care or treatment. (See, IRS Notice 2004-50.) However, such exception specifically only applies to wellness programs and employee assistance programs.

Even though the above exception does not recognize telehealth programs specifically, it allows wellness programs and employee assistance programs as an exception to the HDHP deductible rules even though such arrangements clearly provide medical treatment for existing conditions – albeit as long as such treatment is not “significant.” Depending on the type of telehealth program offered to employees, some employers have relied on this exception. However, due to the absence of a direct exclusion from the IRS, other employers have required employees to pay fair market value for the telehealth visits prior to satisfying the HDHP deductible. This is an allowed IRS strategy and ensures that the HDHP rules are satisfied.

Families First Coronavirus Response Act

Earlier this month, the [Families First Coronavirus Response Act](#) required all ERISA group health plans, including HDHPs, to cover COVID-19 testing services, plus related provider visits, at 100% with no cost sharing. This includes both in-person and telehealth visits. However, the mandate does not apply to COVID-19 treatment and does not apply to other telehealth visits.

CARES Act

The CARES Act relaxes the HDHP rules further by allowing all telehealth visits to be covered by an HDHP prior to satisfying the HDHP deductible. The CARES Act also classifies “telehealth and other remote care” as disregarded coverage for purposes of HDHPs. This change is effective upon enactment and continues through the end of the plan year beginning on or before December 31, 2021. For calendar year plans, this means that the telehealth and other remote care exception will be in effect for the 2020 and 2021 calendar years.

Key Takeaways

- 1. All telehealth visits may be covered prior to the HDHP deductible.* This means that any telehealth visit can be covered with no cost sharing or limited cost sharing prior to the HDHP deductible. For example, if an employer charges a \$25 copay for telehealth visits for its PPO medical option, this same cost sharing could now be applied to the HDHP regardless of whether the HDHP deductible is satisfied. At the same time, right now many employers are covering all telehealth visits at 100% for the remainder of the year. Under the temporary safe harbor, this coverage can now be extended to HDHP participants without having to rely on the no “significant medical care” exception or charging fair market value prior to the HDHP deductible being satisfied.
- 2. The CARES Act “safe harbor” is effective through December 31, 2021 (for calendar year plans).* A technical reading of the CARES Act means that it does not apply to January 1, 2020 through the date of enactment (e.g., March 27, 2020). Even though it technically does not apply for that period, because HDHP coverage is annual, the practical import is that the safe harbor applies for all of 2020 and 2021.
- 3. Periods after December 31, 2021 would revert to prior law (unless the safe harbor is extended).* As many employers and practitioners are aware, once a statutory provision has been added, it is much easier to extend it and/or make the exception permanent. Thus, the current time period could certainly be extended or made permanent by future legislation. However, if that does not occur, then the treatment of telehealth visits would revert to prior law as discussed above.

4. *“Telehealth and Other Remote Care” is not defined.* While certain services are clearly “telehealth,” other services may be questionable. CMS defines “telehealth” as the use of telecommunications and information technology to provide access to health assessment, diagnosis, intervention, consultation, supervision and information across distance. For this purpose, “telehealth” likely includes technologies, such as telephones and the internet. However, e-mail and remote patient monitoring devices may be questionable. Blood pressure monitors and other wearables that collect and transmit patient data for monitoring and interpretation could certainly be considered “telehealth” by some vendors and employers. If such services were considered “telehealth,” the services could be covered prior to the HDHP deductible. (Of course, some of these services could also be covered pre-deductible if they are considered preventive care or part of a wellness plan.) While questions remain, the use of the phrase “other remote care” suggests that Congress intended the exception to be as expansive as possible.