March 18, 2020

COVID-19 Relief Act Mandates Testing Coverage without Cost Sharing

This afternoon the Senate passed the Families First Coronavirus Response Act, H.R. 6201 (the "Act") sending it to President Trump's desk. The President has already indicated that he will sign it. The Act remains unchanged from the amended version passed by the House earlier in the week.

The Act provides workers at employers with fewer than 500 employees paid family and sick leave and financial assistance for COVID-19 testing for individuals without health coverage. The Act also requires all ERISA group health plans, including insured and self-insured plans, to provide the following COVID-19 related services with no cost sharing or prior authorization requirements ("COVID-19 Testing") –

- Any COVID-19 testing services,

- Any health care provider (in-person and telehealth visits), urgent care or emergency room visit for COVID-19 evaluation or testing, and

- Any item or service furnished during such COVID-19 evaluation or testing visit.

The requirement to cover COVID-19 Testing services applies from the date of enactment until the public health emergency ends.

Key Takeaways

1. Telehealth Visits are Covered. The COVID-19 Testing requirement specifically includes telehealth health care provider visits. The first version of the Act did not include telehealth directly. However, when the Act was amended by the House two days later (before

sending it to the Senate), telehealth visits were specifically included by name.

2. COVID-19 Testing Services are Deemed Included in ERISA Part 7. The Act merely deems the COVID-19 Testing mandate to be included in ERISA Part 7 and Chapter 100 of the Code. This means that ERISA and the Code are not actually amended. It also means that the COVID-19 Testing requirement does not apply to group health plans that are normally excluded from the ERISA Part 7 and Code Chapter 100 benefit mandates. In other words, the COVID-19 Testing requirement does not apply to "retiree-only" group health plans and does not apply to "excepted benefits."

3. The COVID-19 Testing Mandate does not Apply to Treatment. The Act only mandates testing and related health care provider visits to be covered without cost sharing. It does not mandate that COVID-19 treatment be covered without cost sharing. At the same time, it should be noted that the IRS recently allowed high deductible health plans to *voluntarily* cover COVID-19 testing *and* treatment services prior to the HDHP deductible being satisfied.

4. Employers May Desire to Apply the Mandate Sooner. The COVID-19 Testing mandate begins to apply from the date of enactment. However, many employers have already revised their plans to cover COVID-19 Testing services. Employers who have already revised their plans may need to revise them further, if their earlier, voluntary revision was not as expansive as the Act.