

Client Alert

March 2020

IRS Issues Guidance for High Deductible Health Plans and Expenses Related to Testing and Treatment of Coronavirus

Summary

As COVID-19 (commonly called the coronavirus) continues to impact more Americans, the costs for the new test for, as well as treatment of, the coronavirus will impact various types of company-sponsored health plans. We understand that the costs of testing for the coronavirus, as well as potential ongoing treatment, are very high and many employers have been considering ways to either cover the costs under high deductible health plans/health savings accounts before meeting the annual deductible or otherwise assisting employees with these costs.

In response to these issues, the IRS has issued guidance that provides that High Deductible Health Plans (HDHPs) can cover testing and treatment of the coronavirus without a deductible, or with a deductible lower than the minimum deductible required for a HDHP. If you do not sponsor a HDHP, there may be other relief available for fully insured and self-funded medical plans, as briefly discussed below.

Specific IRS Guidance for HDHPs

In order for individuals (or employers on their behalf) to make tax-free contributions to health savings accounts (HSAs), the Internal Revenue Code requires that HDHPs offered with HSAs must implement minimum deductibles. HDHPs are generally prohibited from covering most services, other than preventive care, before the deductible is met; failing to comply can cause plan participants to lose their eligibility to make HSA contributions. In order to eliminate barriers for individuals to be tested and treated for the coronavirus, the IRS issued Notice 2020-15 that provides that with respect to an HDHP that otherwise meets the Code requirements, participants (and employers) will continue to enjoy the tax benefits of contributing to an HSA even if the health plan covers medical care services and items purchased relating to testing for and treatment of the coronavirus **before** the participant meets their applicable minimum deductible.

What Employers Should Do Now

Employers who sponsor HDHPs with HSAs should consider whether to provide coverage for testing and/or treatment of the coronavirus pursuant to the relief provided in IRS Notice 2020-15. This relief can have a significant impact on participants in HDHP plans since the deductible is reinstated at the beginning of each year and it is likely that most individuals have not come close to meeting their deductible so early in 2020.

Considerations for Employers with Self-Insured Plans (other than HDHPs) & Fully Insured Plans

The legal landscape with respect to medical plans and coverage is changing rapidly due to response to the coronavirus. For companies that have self-insured plans (other than HDHPs), several health insurance providers are giving employers the option of whether or not to cover the cost of the diagnostic test for the coronavirus. You will want to check with your provider to find out how they are addressing cost sharing with respect to coronavirus testing and what steps need to be taken to opt in or out of any cost-sharing plans. For companies that do not have HDHPs, but have fully insured medical plans, several states have

mandated that insurers waive copays and deductibles for participants in these plans. The list and the relief seem to be changing rapidly, so if you have questions regarding your particular plan, please contact one of our HAK lawyers below.

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