

# LEGISLATION UPDATE

*The following FAQ's summarize the recent provisions and requirements of the new federal laws and regulations related to the COVID-19 pandemic.*

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**This newsletter will provide:**

- I. Current summary of recent COVID-19 legislation related to self-insured health plans**
  - II. Service updates related to COVID-19 testing, Telemedicine, Flexible-Spending Accounts**
  - III. Information regarding Employee Eligibility and Extended Paid Leave Provisions**
  - IV. EBPA Operations Update**
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## **I. New Legislation and Impacts on Self-Insured Health Plans**

**Families First Act** Effective Date April 1, 2020

- Cover testing for COVID-19
- Paid leave for employees unable to work for COVID-19 reasons

**CARES ACT- Coronavirus Aid, Relief, and Economic Security Act:** Enacted March 27, 2020

- Clarification on the Families First leave provisions
- Coverage of non COVID-19 related Telehealth services
- Unemployment assistant
- Business assistance

## II. Service Updates

Employer groups are working with EBPA to notify plan participants on newly covered services related to COVID-19, new legislation, and possible eligibility updates.

### ■ COVID-19 Testing

- All health plans, fully insured and self-funded, must cover testing and diagnosis for COVID-19 without any cost share to their members. This includes Deductibles, Co-payments or Coinsurance.
- The coverage includes all of the following related to determining the need for a test, administering the test and any related medical services provided at that time:
  - In and out of network telemedicine visits
  - Office visits
  - ER Visits
  - Urgent care visits
- All plans including Qualified High Deductible Health Plans (QHDHPs), will cover COVID-19-related treatment received via telehealth or outpatient with no member cost share.
- Currently, there are no federally recommended COVID-19 preventive services or vaccines. When such services or vaccines become available, they must be covered without cost-sharing within 15 days of the date they receive an A or B recommendation from the United States Preventive Services Task Force (USPSTF) or a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.



### ■ Telemedicine

To meet the needs of our employer groups and their plan participants during the period of social distancing, in network and out of network virtual visits will be covered as follows:

- Effective April 1, all non-COVID 19 telemedicine visits (including telephone consultations) will be adjudicated under a plan's existing office visit provision.
- Coverage for Mental Health and Substance Abuse telemedicine visits will be adjudicated under the plans existing outpatient benefit provisions.

### ■ Flexible Spending Accounts

- Retroactive to plan years beginning on and after January 1, 2020, over the counter (OTC) medicines, drugs and menstrual care products are eligible for reimbursement under the health FSA.
- Limited purpose FSA's will cover OTC medicines and drugs related to dental and vision, however, will not cover menstrual care products.

### III. Eligibility

#### Employee Status

Due to the economic slowdown associated with COVID-19, there has been an increase in furloughs and terminations that may impact benefit eligibility. Employer groups may be eligible for federal loans based upon how employees are classified. The following is a basic overview of how classification may impact benefit eligibility generally.

- **Furlough**
  - Essentially an approved unpaid leave of absence. Depending upon the Summary Plan Description (SPD), a furlough may result in the following scenarios:
    - Furlough employee remains benefit eligible, but needs to send check for premium contributions
    - Furlough employee is no longer benefit eligible because he/she lacks the necessary number of hours for benefits. Still considered “employed” and COBRA doesn’t apply
- **Termination**
  - COBRA can be offered from the day of formal separation/end of employment

To determine benefit eligibility, employer groups should review their SPDs and contact their Account Management Team if they wish to amend any requirements.

#### Leave Provisions

The below table summarizes the leave provisions included in the **Families First** and **CARES Acts**.

Leave Provisions		
	Emergency Paid Sick Leave Act	Paid FMLA/Emergency Family and Medical Leave Expansion Act
<b>Applies to:</b>	Employers with fewer than 500* employees and government employers. (Employers of healthcare providers and emergency responders are not required to provide paid sick leave to those employees.)	Employers with fewer than 500* employees and government employers. (Employers of healthcare providers and emergency responders are not required to provide paid sick leave to those employees.)
<b>Available to:</b>	All employees who qualify as employees under the Fair Labor Standards Act regardless of length of employment.	Employees who qualify as employees under the Fair Labor Standards Act AND have been employed at least 30 calendar days, or who were: <ol style="list-style-type: none"> <li>1. Laid off by the employer on or after March 1, 2020,</li> <li>2. Had worked for the employer for at least 30 of the last 60 days before the layoff, and</li> <li>3. Are rehired by the employer.</li> </ol>
<b>Mandatory when:</b>	Employee is unable to work or telework because the employee: <ol style="list-style-type: none"> <li>1. Is subject to a quarantine, isolation order, or medical advisement related to COVID-19; or</li> <li>2. Is caring for an individual who is subject to a quarantine, isolation order, or medical advisement related to COVID-19; or</li> <li>3. Is caring for a child whose school or day care has been closed, or the regular child care provider is unavailable.</li> </ol>	Employee is unable to work or telework because the employee: <ol style="list-style-type: none"> <li>1. Is caring for a child under age 18 whose school or day care has been closed,</li> <li>2. Or the regular child care provider is unavailable due to a public health emergency</li> </ol>

**\*Important:** Workplace closures that prevent an employee from working or remote working do not trigger these leave requirements.

\*This document is provided for general information purposes only. Your specific policy and individual loss circumstances will determine coverage. Readers are urged to consult their account rep concerning any policy questions that may arise. This document is not a replacement for any medical advice. Please consult a licensed physician or medical professional, for any and all medical questions.

Leave provisions included in the **Families First** and **CARES Acts** continued...

Leave Provisions		
	Emergency Paid Sick Leave Act	Paid FMLA/Emergency Family and Medical Leave Expansion Act
<b>Duration:</b>	<p>Full Time Employees: 80 Hours</p> <p>Part Time Employees: Entitled to the number of hours they are regularly scheduled to work during a two-week period.</p>	Up to 12 Weeks**
<b>Benefit:</b>	<p>Employees taking leave due to their own COVID-19 quarantine/symptoms:</p> <ul style="list-style-type: none"> <li>• 100% of regular pay up \$511 per day and \$5,110 in the aggregate in addition to and before any existing paid time off provisions would apply</li> </ul> <p>Employees taking leave to provide care:</p> <ul style="list-style-type: none"> <li>▪ 2/3 of regular pay, up to \$200 per day and \$2,000 in the aggregate in addition to and before any existing paid time off provisions which would apply</li> </ul>	<p>2/3 of regular pay for 10 weeks up to f \$200 per day and \$10,000 in the aggregate following a 10-day period which may be unpaid.</p> <ul style="list-style-type: none"> <li>▪ The first 10 days may consist of unpaid leave, but the employee may get paid for those 10 days under the Sick Leave Act if he/she qualifies for the emergency paid sick leave.</li> </ul>

\*Many stop loss carriers have updated their eligibility language with respect to COVID-19 related circumstances. Groups should consult with their carriers when considering to extend benefits to employees on a furlough or leave of absence.

#### IV. EBPA Operations

EBPA is proud to report that its operations remain open and we continue to support our employer groups and benefit plans during this crucial period in healthcare.

We encourage members to utilize the self-service tools available at [www.ebpabenefits.com](http://www.ebpabenefits.com) whenever possible.

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