



Coronavirus Aid, Relief, and Economic Security Act: Cares Act for Health Plans and Retirement Plans

The Coronavirus Aid, Relief, and Economic Security (CARES) Act became law on March 27, 2020, and includes provisions related to “coronavirus-related distributions.” The new law defines “coronavirus-related distributions” as any distribution from an eligible retirement plan made:

- On or after January 1, 2020, and before December 31, 2020,
- To an individual:
 - Who is diagnosed with the virus SARS–CoV–2 or with coronavirus disease 2019 (COVID–19) by a test approved by the Centers for Disease Control and Prevention,
 - Whose spouse or dependent is diagnosed with such virus or disease by such a test, or
 - Who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease, (or other factors as determined by the Secretary of the Treasury).

The plan administrator of the retirement plan can rely on the employee’s certification that the employee is eligible for a coronavirus-related distribution.

When a distribution is taken early from a 401(k) plan the distribution is generally subject to a 10% additional tax. The CARES Act provides that coronavirus-related distributions will not be subject to this additional 10% tax. The coronavirus-related distribution cannot exceed \$100,000. In addition, the participant can choose whether or not to repay the coronavirus-related distribution over the course of a three-year period (beginning on the day after the date the distribution was received) in one or more aggregate payments. If the participant chooses not to repay the coronavirus-related distribution, then the participant may choose to include in gross income the coronavirus-related distribution over a period of three years, instead of having to report the entire amount of the coronavirus-related distribution in the year in which it is taken.

For plans that allow for plan loans, participants will be able to borrow up to \$100,000 for 180 days after the enactment of the CARES Act. The Act also provides that loan payments that are due through the end of 2020 will be delayed by one year. During the delay period interest continues to accrue on the loan.

The CARES Act also includes a provision that waives required minimum distributions (RMDs) for 2020 for defined contribution plans.

Health Plans

The CARES Act requires group health plans and health insurance issuers offering group or individual health insurance coverage (including grandfathered health plans) to provide coverage, without any cost sharing requirements (including deductibles, copayments, and coinsurance) or prior authorization or other medical management requirements, for the following items and services furnished:

- An in vitro diagnostic test (defined in section 809.3 of title 21, Code of Federal Regulations or successor regulations) for the detection of SARS-CoV-2 or the diagnosis of the virus that causes COVID-19, and the administration of such a test, that:
 - Is approved, cleared, or authorized under the Federal Food, Drug, and Cosmetic Act;
 - The developer has requested, or intends to request, emergency use authorization under section 564 of the Federal Food, Drug, and Cosmetic Act, unless and until the emergency use authorization request under such section 564 has been denied or the developer of such test does not submit a request under such section within a reasonable timeframe;
 - Is developed in and authorized by a State that has notified the Secretary of Health and Human Services of its intention to review tests intended to diagnose COVID-19; or
 - Other tests that the Secretary determines are appropriate.

The CARES Act also provides for the coverage of preventive services for coronavirus/COVID-19. The Act requires group health plans and health insurance issuers offering group or individual health insurance to cover (without cost-sharing) any qualifying coronavirus preventive service. The term “qualifying coronavirus preventive service” means an item, service, or immunization that is intended to prevent or mitigate coronavirus disease 2019 (COVID-19) and that is:

- An evidence-based item or service that has in effect a rating of “A” or “B” in the current recommendations of the United States Preventive Services Task Force; or
- An immunization that has in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

In addition, the CARES Act provides some information on forthcoming guidance on Protected Health Information (PHI). The Act provides that the Secretary of Health and Human Services shall issue guidance not later than 180 days after this law was enacted regarding the sharing of patients' protected health information during the public health emergency with respect to COVID-19. The guidance shall include information on compliance with the HIPAA regulations and applicable policies, including such policies that may come into effect during public health emergencies.