

The Coronavirus (COVID-19) pandemic has put a major strain on every aspect of daily life around the world, including the United States. As spread of the disease shows no sign of slowing down, there is a steadily increasing concern in the United States regarding the health and wellness of not only our citizens, but the economy as well.

In response, President Trump signed the [Coronavirus Aid, Relief and Economic Security \(CARES\) Act](#) into law on March 27, 2020. The CARES Act makes significant changes to health plans and provides \$2.2 trillion in federal funding to address the COVID-19 crisis.

## Changes to Health Plans

### Coverage Requirement for Coronavirus Testing

Effective **March 18, 2020**, the [Families First Coronavirus Response Act](#) (FFCRA) requires group health plans and health insurance issuers to cover COVID-19 testing without imposing any cost sharing (such as deductibles, copayments or coinsurance) or prior authorization or other medical management requirements. The CARES Act expands the FFCRA's coverage requirement for COVID-19 testing.

### Coverage Mandate

This coverage mandate applies to the following health plans and issuers, regardless of grandfathered status under the Affordable Care Act (ACA):

- ▶ All fully insured group health plans
- ▶ All self-insured group health plans
- ▶ Health insurance issuers offering group or individual coverage

During the COVID-19 public health emergency, health plans and issuers must cover FDA-approved diagnostic testing products for COVID-19, including any items or services provided during a visit to a provider (in-person or telehealth), urgent care center or emergency room that relate to COVID-19 testing.

Effective **March 27, 2020**, the CARES Act expands this coverage mandate to include COVID-19 tests provided on an emergency basis, state-developed tests and any other tests approved by the U.S. Department of Health and Human Services.

This coverage cannot be subject to any plan deductible, copayment or coinsurance.

### Provider Reimbursement Rates

The CARES Act also addresses provider reimbursement rates for COVID-19 testing. A health plan or issuer must pay a health care provider the negotiated rate for COVID-19 testing. However, if a health plan or issuer does not have a negotiated rate with a provider, it must pay the cash price published by the provider on its public website or negotiate a lower price.

### Accelerated Coverage for COVID-19 Preventive Services and Vaccines

The ACA requires non-grandfathered group health plans and health insurance issuers to cover certain preventive health services without imposing cost-sharing requirements for the services. The recommended preventive care services covered by these requirements are:

- ▶ Evidence-based items or services that have in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force (USPSTF);
- ▶ Immunizations for routine use in children, adolescents and adults that are currently recommended by the Centers for Disease Control and Prevention (CDC) and included on the CDC's immunization schedules;
- ▶ For infants, children and adolescents, evidence-informed preventive care and screenings provided for in the Health Resources and Services Administration (HRSA) guidelines; and
- ▶ For women, evidence-informed preventive care and screening provided in guidelines supported by HRSA.

In general, health plans and issuers are not required to cover a new preventive care recommendation or guideline until at least one year after the new recommendation or guideline goes into effect.

The CARES Act shortens this deadline to ensure that health plans and issuers cover COVID-19 preventive services and vaccines without cost-sharing once they are approved and available. Under the CARES Act, health plans and issuers must cover COVID-19 preventive services and vaccinations without cost-sharing **within 15 days after a recommendation from USPSTF or the CDC.**

### HDHP Coverage of Coronavirus Costs

Only individuals who are covered by HDHPs can make contributions to HSAs. To qualify as an HDHP, a health plan cannot pay medical expenses (other than preventive care) until the annual minimum deductible has been reached. [IRS Notice 2020-15](#) and the CARES Act provide exceptions to this general rule to encourage testing for and treatment of COVID-19.

IRS Notice 2020-15 provides that HDHPs can pay for COVID-19 testing and treatment before plan deductibles have been met, without jeopardizing their status. As noted above, the FFCRA requires health plans and issuers to cover COVID-19 testing without imposing any cost sharing or prior authorization or other medical management requirements.

Effective March 27, 2020, the CARES Act allows HDHPs to provide benefits for telehealth or other remote care services before plan deductibles have been met. This rule is applicable for plan years beginning before Jan. 1, 2022. This is a discretionary change for employer-sponsored health plans, and not a coverage mandate.

### Tax-Free Coverage for OTC Drugs and Menstrual Products

Effective Jan. 1, 2020, the CARES Act provides that OTC medicines are qualifying medical expenses that may be paid for (or reimbursed) on a tax-free basis by an HSA, health FSA or HRA. This change eliminates an ACA provision that required individuals to have a prescription for an OTC medication (except insulin) to pay for it on a tax-free basis with their HSA, health FSA or HRA.

In addition, effective Jan. 1, 2020, menstrual care products are qualifying medical expenses that can be paid for (or reimbursed) on a tax-free basis by an HSA, health FSA or HRA. Menstrual care products include tampons, pads, liners, cups, sponges or similar products used by individuals with respect to menstruation.

These changes are discretionary for employers that sponsor health FSAs and HRAs. However, because HSAs are individual accounts, and not employer plans, employers do not control how HSA funds are used.

## What is in the stimulus package?

The CARES Act is a combination of tax provisions and other stimulus measures, including emergency business lending. The measure promises to provide help for struggling American families and businesses, as well as health care workers on the front lines of the coronavirus outbreak.

### Significant Provisions Affecting Businesses

The tax package itself is broad, with tax payment relief and significant business tax incentives. Here is a list of the most significant provisions affecting businesses:

- ▶ \$367 billion will be made available in loans for small businesses and \$150 billion for state and local governments. The loans will be forgiven so long as businesses pledge not to lay off their workers.
- ▶ Small businesses forced to suspend operations or that have seen gross receipts fall by 50% from the previous year will be eligible for a tax credit worth up to 50% of wages paid during the crisis, so long as they keep their workers employed throughout.
- ▶ The Treasury Department will distribute \$500 billion in loans to struggling industries (e.g., passenger airlines and businesses critical to maintaining national security). Additionally, an oversight board and inspector general will be created to oversee loans to large companies.
- ▶ Health care providers will receive \$100 billion in grants to help fight the coronavirus and make up for revenue lost by delaying elective surgeries and other procedures.
- ▶ \$200 million will be carved out for the Federal Communications Commission to provide health care providers with connected devices to facilitate telemedicine services, with the goal of freeing up hospital beds. Another \$25 million will go to a grant program that helps rural communities purchase broadband equipment for telemedicine.
- ▶ The Commodity Credit Corporation, an institution that USDA uses to stabilize the farm economy, would see its spending authority increased to \$14 billion. The package also sets up a \$9.5 billion emergency fund for producers, including fresh fruit and vegetable growers, dairy farmers and cattle ranchers, along with local food systems like farmers markets.
- ▶ Colleges and universities, as well as school districts, will receive more than \$30 billion.
- ▶ State and local governments will receive \$150 billion, with \$8 billion set aside for local governments.
- ▶ The package will provide the U.S. Postal Service with a \$10 billion Treasury loan to stave off insolvency. Retailers, restaurateurs and hotels will be able to immediately deduct from their taxes what they spend on property improvements.
- ▶ Employers can defer the 6.2% tax they pay on wages used to fund Social Security.

## Significant Provisions Affecting Individuals

The major piece of the individual tax changes will offer rebate checks based on a new tax credit of \$1,200 per filing adult and \$500 for each qualifying child. Additionally, unemployed individuals will receive an unprecedented expansion of benefits and payments.

Here is a list of the most significant provisions affecting individuals:

- ▶ Single Americans making \$75,000 annually or less will receive \$1,200, married couples (making \$150,000 or less if filing jointly) will get \$2,400 and parents will receive \$500 for each child. The amount of these one-time payments will decrease as annual incomes go up.
- ▶ Unemployed individuals, including freelancers and furloughed employees, will get an extra \$600 per week for up to four months, on top of state unemployment benefits.
- ▶ The package also calls for a new pandemic unemployment assistance program, which will provide jobless benefits to those who are unemployed, partially unemployed or unable to work because of COVID-19 and don't qualify for traditional benefits.
- ▶ The Department of Education will suspend payments for student loan borrowers without penalty or interest through September 30.
- ▶ There will be housing protections against foreclosures on mortgages and evictions for renters. Anyone facing a financial hardship from the coronavirus will receive a forbearance on federally backed mortgage loans of up to 60 days. Those with federally backed mortgage loans who have tenants are not allowed to evict tenants solely for failure to pay rent for a 120-day period.

## Overview of Major Bill Provisions

### Loans and Tax Credit Available to Small Businesses

Keeping businesses afloat and workers under the wing of their employers is critical for ensuring the economy can quickly restart after the pandemic subsides. To this end, the stimulus package creates a \$367 billion federally guaranteed loan program for small businesses that employ 500 or fewer people who must pledge not to lay off their workers. The loans will be available during an emergency period ending June 30, and would be forgiven if the business uses the loan funds for approved purposes and maintains the average size of its full-time workforce, based on when it received the loan.

Additionally, small businesses forced to suspend operations or that have seen gross receipts fall by 50% from the previous year, will be eligible for a tax credit worth up to 50% of wages paid during the crisis, so long as they keep their workers employed through the crisis. Wages remain eligible until business is no longer suspended or gross receipts for a quarter reach 80% of the prior year. The credit could be applied to all wages for employers with fewer than 100 employees, while the benefit is capped at \$10,000 in wages per employee for larger employers.

### Expansion of Unemployment Benefits

The stimulus package includes a significant expansion of unemployment benefits that will extend unemployment insurance by 13 weeks and include a four-month enhancement of benefits (for reference, many states already provide 26 weeks of unemployment benefits, and thus participants

in such states would be eligible for a total of 39 weeks when adding the 13 weeks of federal relief). The enhanced benefits will provide an additional \$600 per week on top of what state unemployment programs pay.

Note that many individuals who typically do not qualify for unemployment insurance will qualify under the package, including independent contractors and self-employed individuals. In sum, those who are unemployed, partially unemployed or who cannot work for a wide variety of coronavirus-related reasons will be more likely to receive benefits.

### **Individual Checks to Taxpayers**

As noted earlier, the package will provide direct payments to taxpayers based on the adjusted gross income found on their 2019 federal tax return. All U.S. residents with adjusted gross incomes up to \$75,000 (\$150,000 for married couples) will get a \$1,200 (\$2,400 for couples filing jointly) payment. Families will receive an additional \$500 per child, as a way to create a safety net for those whose jobs and businesses are affected by the pandemic. However, the payments will start to phase out for individuals with adjusted gross incomes greater than \$75,000. Those with incomes higher than \$99,000 will not qualify for payments under the stimulus package.

It is unclear how long it will take the IRS to process every payment. The Trump administration has indicated that Americans could be seeing direct payments as soon as April 6.

## **How can I take advantage of the stimulus?**

### **How can I obtain a small business loan from the government?**

The stimulus expands the eligibility criteria for borrowers to qualify for loans that are available through the U.S. Small Business Administration (SBA) by adding the Paycheck Protection Program to the SBA's extensive loan offerings. The Paycheck Protection Program provides federally-guaranteed loans up to a maximum amount of \$10 million to eligible businesses, with a maximum interest rate of 4%, and which can be partially forgivable, to encourage businesses to retain employees through the COVID-19 crisis. The Paycheck Protection Program loans apply to costs incurred retroactive to Feb. 15 through Jun. 30, 2020. To accommodate for this SBA expansion, the stimulus has authorized commitments to the SBA 7(a) loan program, in the amount of \$349 billion.

Lenders who are already authorized to make loans under the SBA's existing 7(a) loan program are automatically eligible to make Paycheck Protection Loans. Participating lenders will be permitted to determine borrower eligibility under the Paycheck Protection Program, and will be entitled to make and approve Paycheck Protection Loans, without SBA review.

The Small Business Administration has a network of 1,800 approved lenders that process small business loans. If you are interested in a Paycheck Protection Program loan, you should first contact your bank to see if it is an SBA-approved lender. If your bank is not an SBA-approved lender, you can [contact the SBA](#) to find one.

In evaluating eligibility, lenders are directed to consider whether the borrower was in operation before Feb. 15, 2020 and had employees for whom they paid salaries and payroll taxes or paid

independent contractors. Borrowers should be prepared to provide a good faith certification that:

- ▶ The uncertainty of current economic conditions makes the loan request necessary to support ongoing operations,
- ▶ The borrower will use the loan proceeds to retain workers and maintain payroll or make mortgage, lease, and utility payments,
- ▶ Borrower does not have an application pending for a loan duplicative of the purpose and amounts applied for, and
- ▶ From Feb. 15, 2020 to Dec. 31, 2020, the borrower has not received a loan duplicative of the purpose and amounts applied for

Lastly, note that businesses can receive funding through more than one federal loan program, including SBA disaster assistance loans as long as the loans are being applied to different cost centers.

### **How can employees collect unemployment assistance?**

If your business is closed because of COVID-19 and your employees cannot work from home, or your employees are unable to work due to the disease or need to take care of someone who has it, they can likely collect unemployment. As each state administers a separate unemployment insurance program, employees should be told to visit their state's unemployment insurance website, which will provide the relevant details regarding their individual programs. The information employees will need includes their Social Security number and driver's license or state ID.

*Disclaimer - This briefing has been prepared by Poms & Associates Insurance Brokers, LLC to provide information on recent developments of interest to our clients. It is not intended to offer legal or regulatory advice for a particular situation. Events are rapidly developing during this national state of emergency, and best practices are constantly changing. We recommend that individuals and entities carefully monitor and follow health directives of the WHO and CDC, along with federal, state and local authorities and contact their attorney for more in-depth information regarding any employee action.*