

### **CARES Act Update - Employee Benefit Plans and Arrangements - Part 2**

The Coronavirus Aid, Relief, and Economic Security Act (H.R. 748), known as the CARES Act, became law on March 27, 2020. This summary is the second part of our discussion of certain of the provisions of the CARES Act that can impact employee benefit plans and arrangements. The first part can be found [here](#).

#### **Exclusion from Tax for Certain Employer Payments for Student Loans**

Educational assistance programs can be expanded under the CARES Act to include payments made before January 1, 2021, by an employer to an employee, or directly to a lender, of principal amounts or interest on any qualified education loan (defined in Internal Revenue Code (IRC) §221(d)(1)) incurred by the employee for his or her own education. Note that it appears that such repayment will be required to be made through an educational assistance program under IRC §127, and will be subject to the rules applicable to such program, including a written plan document requirement and a cap on benefits payable under the program that can be excluded from 2020 taxable income (including loan repayments as well as other benefits provided under the program) of \$5,250. In addition, such a program will continue to be required to benefit a class of employees that does not discriminate in favor of highly compensated employees, along with limits on the amounts that can be paid to certain principal shareholders or owners.

Employers who wish to provide this benefit and do not currently have an educational assistance program under IRC §127 will need to adopt one, and those that already have such a plan will likely need to amend it. Note that if an existing educational assistance plan references IRC §127 to define available benefits, the change in the Code could operate to expand the benefit under the plan without any further action required by the employer, but if that expansion were not desired, an amendment may then also be required.

#### **Telehealth Benefits under High Deductible Health Plans**

The CARES Act also permits high deductible health plans (HDHPs) to provide telehealth and other remote care services without a deductible for plan years beginning on or prior to December 31, 2021. Separately, IRS Notice 2020-15 further provides that HDHPs may provide medical care services and items purchased related to the testing for and treatment of COVID-19 prior to the satisfaction of applicable minimum deductibles. (This is particularly relevant, as certain COVID-19 testing and preventative services, such as vaccines, are required to be fully covered, with no cost sharing provisions, under health insurance plans pursuant to the Families First Coronavirus Response Act, as amended by the CARES Act.) In light of these changes, adding such benefits to a high deductible health plan (and, under the CARES Act, for telehealth and other remote care services, enabling their costs to be reimbursed or otherwise providing for them under another plan or program (such as a "limited purpose health FSA")) should not result in a loss of eligibility for HDHP participants for deductible (or otherwise excludable) contributions to Health Savings Accounts (HSAs).

**Inclusion of Certain Over the Counter Medical Products as Qualified Medical Expenses under FSAs, HRAs, HSAs, and Archer MSAs**

The CARES Act expands the definition of qualified medical expenses for several types of plans by removing the requirement that medicines and drugs be obtained by prescription (thereby including certain over the counter medications) and also including certain menstrual care products. This change permits such items to be eligible for reimbursement from certain account-based plans, including health savings accounts (HSAs), health flexible spending arrangements (Health FSAs) health reimbursement arrangements (HRAs), and Archer MSAs. These changes apply to amounts paid and expenses reimbursed after December 31, 2019, and have no expiration date. Plans should be reviewed to determine whether a plan amendment will be required to effectuate this change; summary plan descriptions will likely require change, even if a change to the plan document is not required. Under current regulations, this liberalization of covered items generally will not alone enable employees to change the amounts they have elected to contribute to Health FSAs before the next open enrollment period.

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