

COVID-19 Q&A

Benefits Considerations for Employers

This Q&A is intended to answer some common questions employers may have about their group health and welfare benefit plans during the COVID-19 (Coronavirus) emergency. Contact your Stephens Insurance representative for direction if you have specific questions about your plan.

Is COVID-19 testing required to be covered by our plan? May we waive co-pays and coinsurance under our high deductible health plan (HDHP)?



Some states now mandate that insurers cover COVID-19 testing at no cost to participants. These include California, Colorado, New York, Oregon and Washington. Other states, such as Connecticut, Massachusetts and Georgia, have issued guidance encouraging insurance carriers to cover the testing, but not requiring it. We expect additional state action as the situation evolves.

The U.S. House of Representatives has passed a bill, the Families First Coronavirus Response Act, H.R. 6201, to require all health insurance plans (both insured and self-funded plans) to cover the following without any cost sharing requirements (including deductibles, copayments, and coinsurance) or prior authorization or other medical management requirements:

- FDA-approved diagnostic tests for the detection of and the diagnosis of the virus that causes COVID-19.
- Health care provider office visits, urgent care center visits, and emergency room visits that result in an order to administer the diagnostic tests described above.

Self-insured plans not subject to state insurance laws should consult with their third party administrators and stop loss carriers before voluntary coverage changes are made. We expect that when H.R. 6201 goes to the U.S. Senate, further negotiations will take place that may result in modifications to the legislation. The IRS has addressed the issue of COVID-19 coverage mandates and HDHP coverage with Notice 2020-15. It states that until further guidance is issued a health plan that otherwise satisfies the Internal Revenue Code requirements to be a HDHP will not fail to be a HDHP because the plan provides "health benefits associated with testing for and treatment of COVID-19 without a deductible, or with a deductible below the minimum deductible." This means that HDHP plans may cover COVID-19 testing and treatment as first dollar coverage – before the deductible has been met.

If our employees are no longer working, are they still entitled to group health plan coverage?

This depends upon the terms of your plan document or certificate of coverage if your plan is fully insured. Check the plan document or certificate to determine how long an employee who is not actively working may remain covered under the plan. Benefits must be continued for those on Family Medical Leave Act (FMLA) leave and on Uniformed Services Employment and Reemployment Rights Act (USERRA) leave and there also could be state laws that may apply to require active health plan benefit continuation.



Does family and medical leave apply to this situation?

Yes, employees requesting leave for their own serious health condition or to care for a family member's serious health condition relating to COVID-19 could be protected by the FMLA to the extent that they meet FMLA requirements. An employer may also have internal policies that provide additional leave once FMLA leave is exhausted.

The Department of Labor has stated that leave taken by an employee to avoid exposure to the flu would not be protected under the FMLA. It also advised that employers should encourage employees who are sick with pandemic flu or who are exposed to sick family members to stay home and should consider flexible leave policies in these circumstances.

H.R. 6201, if passed unchanged in the Senate, would create a new paid FMLA right related to the COVID-19 emergency. This FMLA leave would apply to employees who have been employed for 30 calendar days and includes:

- 12 weeks of FMLA, with the first two weeks unpaid (employees may elect to use available paid leave to cover the first two weeks of leave);
- The remaining 10 weeks must be paid at 2/3 the employee's regular rate;
- Employees who work a part-time or irregular schedule are to be paid based on the average number of hours the employee worked in the six months prior to taking emergency FMLA leave;
- Employees who have worked for less than six months prior to leave are entitled to the average number of hours the employee is normally scheduled for work;
- This leave is available for the following reasons related to the COVID-19 emergency:
 - To comply with a requirement or recommendation by a health authority or health care provider to quarantine due to exposure to, or symptoms of, COVID-19;
 - To care for an at-risk family member who is adhering to a requirement or recommendation by a health authority or health care provider to quarantine due to exposure to, or symptoms of, COVID-19; and
 - To care for the employee's child under age 18 if the child's school or place of care (including if childcare is unavailable) has been closed due to a public health emergency.

May an employer encourage teleworking as an infection control measure?

Yes, the EEOC has given its opinion that telework is effective at controlling the spread of infection. It also states that employees with disabilities that put them at high risk for complications of pandemic flu may request telework as a reasonable accommodation under the ADA as a measure to reduce their chances of infection.

Can I send employees home if they exhibit potential symptoms of a contagious illness?

Yes. Sending an employee home who has symptoms of a contagious illness is not a violation of the Americans With Disabilities Act (ADA). An employer may ask an employee to seek medical treatment and to get tested for COVID-19. The CDC states that employees who exhibit symptoms of influenza-like illness at work during a pandemic should go home from work.

How does HIPAA apply to information about COVID-19?

The Department of Health and Human Services issued a bulletin on February 3, 2020 as a reminder of HIPAA privacy in connection with an outbreak of infectious disease or other emergency situation.



As relevant to a pandemic, the Privacy Rule allows covered entities to disclose protected health information without an individual's authorization in the following situations:

Public health activities:

- To a public health authority, such as the Centers for Disease Control & Prevention (CDC), or a state or local health department, that is legally authorized to collect such information.
- At the direction of a public health authority, to a foreign government agency that is acting in collaboration with the public health authority.
- To persons at risk of contracting or spreading a disease or condition if another law, such as a state law, allows the covered entity to notify persons as necessary to prevent or control the spread of the disease or to carry out public health interventions or investigations.

Disclosures to family, friends and others involved in an individual's care and for notification:

- A covered entity may share protected health information with a patient's family member, relative, friend, or other persons identified by the patient as involved in the patient's care. It may also share information about a patient's location and general condition as necessary to identify, locate and notify family members, guardians, or anyone else responsible for the patient's care.
- The covered entity should get verbal permission from the individual or be able to reasonably infer that the patient does not object, when possible. If the individual is incapacitated or not available, covered entities may share information for these purposes if, in their professional judgment, doing so is in the patient's best interest.

It is important to remember that HIPAA's Privacy Rule extends only to covered entities (group health plans, health care providers, and health care clearinghouses). If an employee notifies an employer that he or she is self-quarantining because of a positive COVID-19 test, the employer would not be subject to HIPAA with regard to that information. Information obtained in the employer role outside of the group health plan is not subject to HIPAA. However, if the source of information is from a claim, diagnosis, or provided through the group health plan, then HIPAA would apply.

If we institute furloughs or reductions in hours, is COBRA triggered?

There has been some concern about COVID-19's impact on supply chains and production. If economic conditions cause an employer to place employees on furlough or to reduce their hours, the employer should consider whether COBRA should be offered.

A reduction of hours is a COBRA triggering event that often occurs when an employee moves to part-time work, is temporarily laid off, or otherwise experiences a reduction in hours. If eligibility for the plan depends on the number of hours worked, and the employee fails to work the required hours, then the employee has experienced a reduction of hours. All covered employees experiencing a reduction of hours and loss of coverage due to the furlough are entitled to a COBRA election (as are their covered spouses and dependent children).

Are there certain benefits we can leverage to help our employees?

Employers should consider promotion or even enhancements of services such as telemedicine (which can be utilized from the employee's home), employee assistance programs (which often provide benefits to help with stress management, elder care, and personal finance), wellness programs (which may offer nurse phone line services or basic health education), disease management programs (which assist those with chronic health conditions, who are at higher risk of complications with COVID-19), and preventive care services.

Is an employee who is quarantined eligible for short-term disability?

A person who is in quarantine but not diagnosed with COVID-19 will likely not be eligible for short-term disability benefits until he or she is diagnosed with the virus. The person would need to meet the definition of disability as outlined in the policy.

Is infection with COVID-19 a disability covered under our short-term disability policy?

Generally, employees covered by short-term disability may be eligible for benefits if they are diagnosed with COVID-19 and are sick and unable to perform the major duties of their job because of the illness. Each claim will be evaluated based on the specific facts and insurance policy language. For most policies, a person must be unable to work at either their regular place of employment or their home.



If we self-fund our short-term disability benefits, do we have more flexibility to expand coverage?

Even with self-funded plans, carriers generally follow the same approach as that for fully-insured benefits, but they are more likely to work with employers to administer their plans according to the employer's particular needs.

Stephens Insurance has been reaching out to carriers to ask specific questions about short-term disability policy issues, including the impact of a positive employee COVID-19 test result, of employee exposure and quarantine but a negative test or no test completed, how benefits will coordinate with state and/or federal leave laws, and whether the carrier will administer any new mandated paid leave. Contact your Stephens Insurance representative if you have specific questions about your plan.

Has the deadline for Form 5500 filings been extended?

No, to date the Form 5500 deadline (the last day of the seventh month after the plan year ends) has not been extended. For calendar-year plans, the deadline with no extension is July 31, 2020.

Additional Resources

HHS Office for Civil Rights Bulletin: HIPAA Privacy and Novel Coronavirus
<https://www.hhs.gov/sites/default/files/february-2020-hipaa-and-novel-coronavirus.pdf>

Text of DOL Q&As on COVID-19 or Other Public Health Emergencies and the FMLA:
<https://www.dol.gov/agencies/whd/fmla/pandemic>

Text of IRS Notice 2020-15: High Deductible Health Plans and Expenses Related to COVID-19
<https://www.irs.gov/pub/irs-drop/n-20-15.pdf>

EEOC: Pandemic Preparedness in the Workplace and the Americans With Disabilities Act:
https://www.eeoc.gov/facts/pandemic_flu.html

Centers for Disease Control updates: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>

World Health Organization, Q&A on Corona Viruses: <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses>

This alert is intended to provide general information on employee benefits issues. It should not be construed as legal or tax advice and you should seek legal advice for application of this information to your specific circumstances.