

# BENEFITS COMPLIANCE

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# AGENDA

- 1 Medical Plan Changes
- 2 Outbreak Period Extended Deadlines
- 3 Account-based Plan Changes
- 4 Cafeteria Plan Relief
- 5 Furlough/Layoff Benefits
- 6 Tax Credits and FFCRA Paid Leaves

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# PLAN AND DEADLINE CHANGES



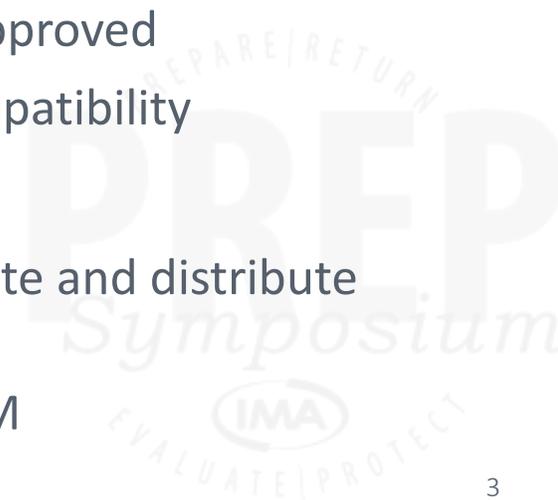
# MEDICAL PLAN CHANGES

## Know what's changed

- All plans must cover no-cost telehealth for coronavirus consults (*but many plans are not charging for any telehealth for any reason*)
- All plans must cover **no-cost COVID-19 testing**, including serology tests as well as all services related to getting tested, such as office visit or emergency room visit
- All plans must cover **no-cost testing for other coronaviruses** (such as influenza A & B and norovirus) **and RSV** if that visit results in a COVID-19 test
- Federally, all of these requirements began March 18 with FFCRA becoming law, but states may have implemented requirements before March 18
- HHS has extended the public health emergency, which now ends July 25 unless extended again
- Non-grandfathered plans will have to cover a vaccine within 15 days of being approved
- The IRS is temporarily allowing all of the above without compromising HSA compatibility

## Communicate what's changed

- If any benefits on SBC have changed (such as cost for telehealth consults), update and distribute SBCs as soon as reasonably practicable
- Insurer/TPA might provide updated certs; if not, consider issuing your own SMM



# “OUTBREAK PERIOD” DEADLINE EXTENSIONS

- ❑ March 1, 2020 through 60 days after the “announced end” of the National Emergency is designated an “Outbreak Period” (*we don’t have an announced end date yet*)
- ❑ All days of the Outbreak Period are disregarded for the following deadlines:
  - ✓ HIPAA special enrollment notice and election deadlines
    - 30 days for marriage, birth, adoption, or placement with employee for adoption
    - 60 days for loss of Medicaid/CHIP or newly qualifying for Medicaid/CHIP premium assistance
  - ✓ All COBRA notification, notice, and payment grace period deadlines
  - ✓ All claim submission and appeal deadlines (*for disability plans, too*)
- ❑ No notice requirement, so no model notice...IMA created a [sample notice](#) to communicate these deadline extensions to active employees, those on COBRA, and other affected QBs

# REVISED COBRA MODEL NOTICES

- ❑ Both the general notice and election notice were updated with identical new paragraphs to better explain COBRA's interactions with Medicare
  1. Medicare's 8-month special enrollment period following loss of active coverage
  2. COBRA is not creditable toward Part B, so delaying Part B results in late enrollment penalties for life (*confusing because COBRA can be creditable toward Part D*)
  3. If not enrolled in any Medicare, COBRA may end early when enrolling in Medicare later
  4. COBRA typically pays secondary to Medicare, even if not enrolled in Medicare
- ❑ The revised notices do not communicate "Outbreak Period" deadline extensions
- ❑ Be sure to tailor the notices (*e.g., if you don't recognize Medicare entitlement or legal separation as qualifying events, remove them from the notice*)

# HRA/FSA/HSA CHANGES IN QUALIFIED EXPENSES

Two permanent changes to the tax code retro to January 1, 2020:

- 1) Over-the-counter drugs/medications no longer require a prescription
- 2) Menstrual products are a new reimbursable category

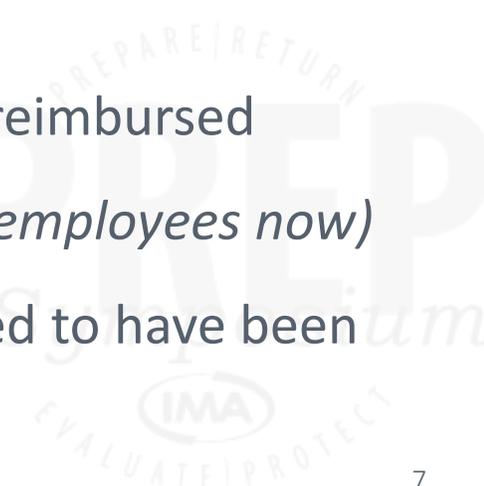
Note:

- Employers are not mandated to adopt these changes
- If HRA/FSA plan documents just reference the tax code to define eligible expenses, then updates will be incorporated automatically
- If HRA/FSA plan documents do not just reference the tax code to define eligible expenses, then employer wanting to adopt these changes should update plans
- Also be sure to distribute SMM or updated SPD when you reasonably can



# CAFETERIA PLAN RELIEF

- If insurer/stop loss approves, employer may decide to adopt any of these changes:
  - Prospectively elect medical coverage if you'd waived before
  - Prospectively add dependents to medical coverage
  - Prospectively change to different medical option provided by employer
  - Prospectively drop medical only if attesting in writing to already having or immediately securing other medical coverage (sample language was provided)
- Employers can also decide whether to allow broad Health FSA and daycare FSA changes (prospectively enroll or increase/decrease amount)
  - May limit decrease to ensure employees at least pay in what they've been reimbursed
- Adopt any changes into your cafeteria plan by December 31, 2021 (*but notify employees now*)
- If you allowed any of the changes above prior to this guidance, you are deemed to have been in compliance



# FSA SPECIAL GRACE PERIODS FOR 2020

- Employers with a health FSA and/or daycare FSA grace period that ends during 2020 may decide whether to extend the grace period to the end of 2020
- Employers with a health FSA and/or daycare FSA plan year ending in 2020 may decide whether to offer a special grace period to the end of 2020
  - This is even allowed if your health FSA has a carryover provision (*you ordinarily cannot have a grace period and carryover provision in the same year; daycare FSA cannot have a carryover provision*)
  - Claims incurred during the special grace period would count first toward the prior year's health FSA balance, then the carryover amount would be determined after the special grace period runs its course
- Adopt any changes into your plan by December 31, 2021 (*but notify employees now*)



# FSA CARRYOVER NOW INDEXES ANNUALLY

- Health FSAs are allowed to have a carryover benefit up to \$500
- The carryover limit will now index annually
- Since the health FSA limit indexes annually and the carryover limit was initially set at 20% of the health FSA limit, the carryover limit will now stay at 20% of the annually indexed health FSA limit (*rounded to \$10*)
- The 2020 health FSA limit is \$2,750, so a 2020 plan year can have a carryover benefit of \$550 going into 2021 (20% of \$2,750)
- Employers can choose whether to adopt this change or keep it at a lower amount
- Remember, you cannot have a carryover and grace period in the same year
- Adopt any changes into your plan by December 31, 2021 (*but notify employees now*)

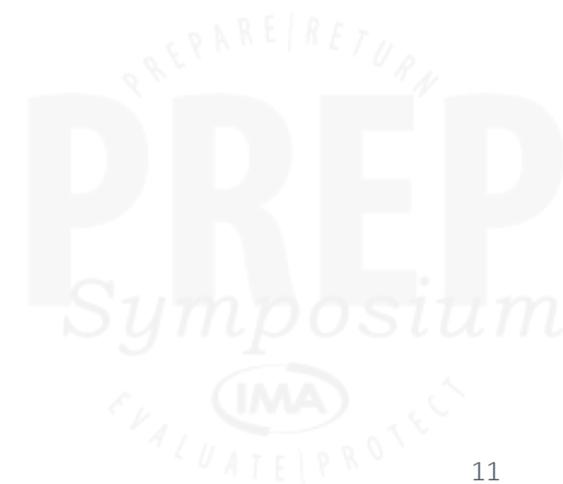


# PAYROLL, TAX, AND OTHER ADMINISTRATIVE DETAILS



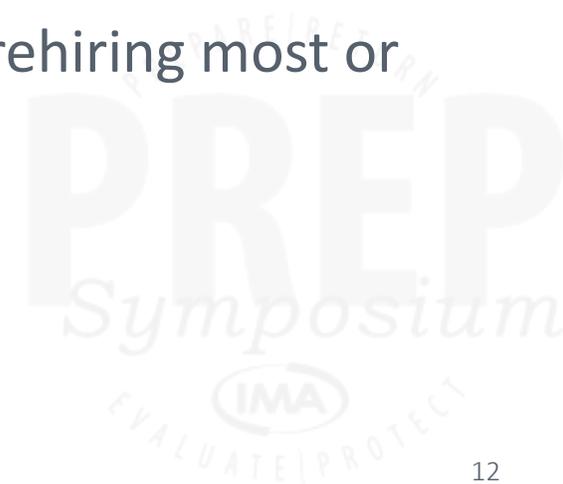
# FURLOUGHED WORKERS

- Know how long furloughed/reduced-hour workers can stay on active coverage
  - If not returning to full-time work before those benefit deadlines, move to COBRA or conversion/portability as appropriate
  - Remember when other benefits end, medical might stay intact for employees in a full-time stability period under the look-back method
- Know how premiums are being handled (pay along the way, or owe the employer upon returning to work)
- If benefits had to lapse, know the rules to reinstate benefits



# LAI D OFF WORKERS

- ❑ If you promised to provide laid off workers COBRA subsidies for a limited time, be sure to cease those subsidies on time
- ❑ Don't forget the Outbreak Period extensions allow COBRA payment grace periods to be paused until the end of the Outbreak Period
- ❑ Laid off workers rehired within 13 weeks can likely have benefits reinstated, just check your policy terms for details on each plan and don't promise benefits the insurer won't ultimately deliver
- ❑ If you're looking for PPP loan forgiveness, you may need to work on rehiring most or all of them by June 30

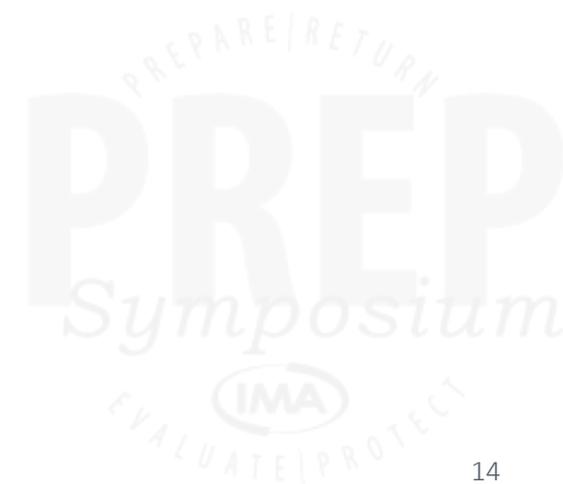


# PAYROLL AND BENEFITS DOCUMENTATION

- Ensure all changes and deadlines can be properly tracked and documented
- This is also a good time to evaluate your leave provisions, such as considering extra ways to temporarily provide paid leave to avoid spreading illness at work (*there may be tax credits to help pay toward these new leaves*)
- Pay attention to details needed to claim any tax credits and loan forgiveness
  - FFCRA, ERC, §45S Paid FMLA credit, Work Opportunity Tax Credit
  - PPP loan forgiveness
- Remember no double-dipping allowed
  - Wages and benefits claimed under FFCRA tax credits cannot also be claimed under ERC or deducted as normal business expenses
  - Wages and benefits paid and forgiven under PPP cannot be claimed under FFCRA tax credits or deducted as normal business expenses

# DON'T FORGET USUAL SUMMER TASKS

- PCOR fee was extended for self-funded plans and HRAs, due July 31
- Form 5500 (or extensions) due between April 1 and July 14 were extended to be due July 15
  - Normal calendar year plans still need to file or request extension by July 31
- Some employers are small enough to need to do some regular recounts for things like:
  - Medicare Secondary Payer 20-employee weekly recount
  - FMLA 50-employee weekly recount



# EMPLOYEE RETENTION CREDIT (ERC)

- If an employer not in the public sector was subject to full or partial government restriction or experienced a quarterly loss of 50% year over year, and did not take out a PPP loan, then the ERC provides 50% tax credit for certain wages and benefits paid, up to \$10K (*so up to \$5K credit per employee*)
  - Employers that averaged >100 FT employees in 2019 can claim the credits only for hours they pay for which an employee is not performing services due to COVID-19
  - Employers that averaged up to 100 FT employees in 2019 can claim the credits for all hours they pay, including work time and personal paid time off
  - FT is the ACA's 30 hrs/wk or 130 hours in a calendar month
  - Also like ACA, employers in a controlled group or affiliated service group combine counts
- Credit remains available until end of quarter that the employer is not restricted by government or returns to 80% year over year receipts
- Remember you cannot double dip...wages and certain benefits under EPSL/EFML can get 100% tax credit, so better to claim those under FFCRA than under ERC, and wages and benefits claimed under ERC cannot be deducted as normal business expenses

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

- ❑ Created two new emergency paid leave provisions for April 1 through December 31, 2020
- ❑ Applies to employers with <500 employees (*as of the date of a leave request, subject to some affiliated employer counting rules under FLSA and FMLA*) and reimburses the employer with 100% tax credit for paid wages and health benefits related to qualified emergency leaves
  - Also applies to employers of any size in the public sector (with no tax credits)
- ❑ Emergency Paid Sick Leave (EPSL) provides all employees up to 80 hours for 6 qualified reasons (*really 5 reasons for now, because HHS has not provided guidance on the 6<sup>th</sup> reason*)
  - 3 reasons offer full pay to \$511/day, other reasons offer 2/3 pay to \$200/day
  - Very limited possibilities to exclude certain requests on a case by case basis (*such as leave requests by health care providers or emergency responders, or leave requests for school/child care unavailability for employers with <50 employees where the request would cause a hardship as a going concern*)
- ❑ Emergency Family and Medical Leave Expansion (EFML) provides all employees after 30 days of employment with up to 12 weeks EFML only to care for children during school/child care unavailability (*same considerations for possible exclusions as listed above*) at 2/3 pay to \$200/day
- ❑ No model forms, so IMA created sample forms (and don't forget the poster)



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