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How the CARES Act Impacts Employee Benefit Plans

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief and Economic Security Act (CARES Act) into law. The CARES Act is the largest stimulus bill in the nation's history and seeks to alleviate some of the financial pressures experienced by both companies and individuals as a result of the coronavirus pandemic. It includes several provisions impacting both qualified retirement plans and health and welfare plans, which are summarized below.

While most provisions are effective immediately, the CARES Act includes an extended remedial amendment period for retirement plans until the end of the 2022 plan year (2024 for government sponsored plans) to adopt any amendment under the CARES Act. However, any required provisions must be complied with in operation immediately.

Provisions Affecting Qualified Retirement Plans

In-Service Distributions for Individuals Impacted by COVID-19 *Permissible Change*

The CARES Act permits sponsors of qualified retirement plans to offer an in-service distribution of up to $100,000 to participants impacted by COVID 19. The distribution limit applies across all plans maintained within the same controlled group and the aggregate of the distributions received by an individual may not exceed $100,000. The distribution is not subject to the 10 percent early withdrawal penalties under Code section 72(t).

A participant is eligible for the distribution, if:

- The participant is diagnosed with COVID-19;
- The participant's spouse or dependent is diagnosed with COVID-19; or
- The individual experiences adverse financial consequences as a result of being quarantined, being furloughed, being laid off, experiencing a reduction in work hours because of COVID-19 or an inability to work because they lack childcare.

Plan sponsors may rely on a participant's self-certification regarding eligibility for the distribution. Additionally, the distribution is not a hardship distribution, so participants are not obligated to demonstrate a financial need or substantiate the amount requested.

The full distribution amount is not included in the participant's taxable income in

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Further, if a plan offers this distribution option, the plan generally must permit participants to repay the distribution over a three-year period, beginning on the date of the distribution. The distribution may be repaid in multiple installments and participants are not required to repay the distribution in full.

Participants are eligible to receive this in-service distribution from January 1, 2020 through December 31, 2020.

Plan Loan Relief *Dollar Amount Optional; Repayment Required*

The CARES Act increases the maximum loan amount permitted under Code section 72(p) for any loan requested by a participant impacted by COVID-19 from March 27, 2020 through September 23, 2020. During the affected period, any participant requesting a loan may receive the lesser of:

- $100,000; or
- the participant's vested accrued benefit under the plan.

Additionally, any deadline to repay a plan loan occurring in 2020 for a participant impacted by COVID-19 is automatically delayed for a period of one year. The loan repayment schedule must be adjusted accordingly and the loan increased for interest due to the longer period of payments.

Required Minimum Distribution Waiver *Required Changes*

Any required minimum distribution payments due during calendar year 2020 are automatically waived for participants in a defined contribution plan qualified under Code sections 401(a), 403(a), 403(b) and 457(b). The waiver also applies to any participant experiencing a required beginning date on April 1, 2020, who would begin required minimum distributions in 2020.

Further, for purposes of payments after death to a non-designated beneficiary, which generally must occur within five years of the participant's death, the applicable five-year period must be determined without regard to 2020. Accordingly, if the five-year required distribution period includes 2020, the distribution period must be extended to six years.

Single Employer Defined Benefit Plan Funding Relief *Permissible Change*

The CARES Act permits sponsors of single employer defined benefit plans to delay

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making any required funding contributions due in 2020 until January 1, 2021. Plan sponsors are generally required to make required funding contributions within 8.5 months of the close of the plan year, provided the plan is not underfunded. If funding contributions are delayed, the contribution must be increased for earnings using the plan's effective rate of return for the period of the delay. Additionally, a plan sponsor can choose to use the plan's adjusted funding target attained percentage for the last plan year ending prior to January 1, 2020, as the adjusted funding target attained percentage for plan years including calendar year 2020.

Notice Relief *Information Only*

The CARES Act authorizes the U.S. Department of Labor (DOL) to delay any applicable notice and filing deadlines occurring in 2020. This provision could delay the filing deadline for Forms 5500 and distribution of Annual Funding Notices and quarterly Participant Statements, among others. This authorization does not appear to extend to the Internal Revenue Service.

As of March 30, 2020, the DOL has not delayed any notice or filing deadlines.

Provisions Affecting Health and Welfare Plans

Coverage of COVID-19 Preventative Measures *Information Only*

The CARES Act amends the Affordable Care Act preventive services rules to require that any item, service or immunization intended to prevent or mitigate COVID-19 recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention (ACIP) or recommend by the U.S. Preventive Services Task Force (USPSTF) with an A or B rating be covered at 100 percent with no cost sharing effective 15 days after the date the recommendation is issued. The general rule that any new preventive service recommendation is not effective until the first plan year beginning one year after the recommendation is issued will not apply.

While only non-grandfathered plans under the Affordable Care Act are subject to the preventive services rule, the CARES Act does not specify whether the change is applicable to only non-grandfathered plans. However, because of the inevitable delay between the passage of the CARES Act and the issuance of any recommendations from the ACIP or USPSTF, we expect further clarification will be provided.

Telehealth Deductibles in High Deductible Health Plans *Required Change*

The CARES Act provides that for plan years beginning on or before December 31, 2021, a high deductible health plan (HDHP) may provide benefits for telehealth visits or remote care services before application of the deductible. The change is effective as of March 27, 2020, so any telehealth visits or remote care services obtained prior to March 27, 2020, may be covered by the HDHP only after satisfaction of the deductible.

Inclusion of Over-the-Counter Drugs and Menstrual Products as a Qualifying Medical Expense *Information Only*

Effective January 1, 2020, the CARES Act provides that all over-the-counter medicines and drugs are deemed a qualifying medical expense. As a result, participants may purchase over-the-counter drugs using pre-tax dollars under a participant's health savings account, flexible spending account and health reimbursement arrangement. Prior to this change, over-the-counter drugs were only deemed a qualifying medical expense if the participant received a prescription to purchase the over-the-counter drug.

Additionally, the CARES Act provides that any menstrual product is also deemed a qualifying medical expense. Menstrual products include tampons, pads, liners, a menstrual cup or sponge, or any other product used with respect to menstruation.

Prescription Drug Coverage Under Medicare Prescription Drug Plans *Required Change*

During a public health emergency, like the coronavirus pandemic, Medicare prescription drug plans and Medicare Advantage Prescription Drug plans must allow individuals to receive a 90-day supply for any covered drug. The 90-day supply does not extend to any drug that includes a safety edit, like opioids.

Coverage of COVID-19 Diagnostic Testing *Required Change*

The CARES Act amends the Families First Coronavirus Response Act (FFCRA) to expand required coverage of tests designed to diagnose COVID-19. Under FFCRA, group health plans and health insurers are required to cover any FDA-approved testing at no cost to the individual. The CARES Act expands this coverage requirement to also include tests provided on an emergency basis, state developed tests and any other tests deemed appropriate by the U.S. Department of Health and Human Services.

Additionally, the CARES Act clarifies the reimbursement rates for diagnostic testing required under the FFCRA. Generally, coverage of COVID-19 diagnostic testing may be reimbursed based on the negotiated rate established with the provider. However, if such a negotiated rate does not exist, the CARES Act provides that the plan or insurer shall reimburse the provider based on the provider's "cash price." Providers are required to make the cash price publicly available on the provider's website. Failure to publish cash prices could result in civil penalties of up to $300 per day.

If you have any questions about the CARES Act and the potential impact these legal changes could have on your benefit plans, please contact your Reinhart attorney.