



Executive Actions Responding to the COVID-19 Emergency

Allow HSAs to be used to pay for other health care related expenses

Currently, taxpayers can only use health savings account (HSA) funds to pay for certain IRS-defined medical expenses. The IRS does not currently consider expenses related to certain types of arrangements, including direct health care arrangements and health care sharing ministries, eligible expenses. Executive Order 13877 directed the Treasury Department to revise its regulations to allow such costs to be paid from HSAs. Many of these subscription-based arrangements include innovative telehealth services that help promote social distancing during the COVID-19 crisis while ensuring individuals can receive the medical care they need.

Recommendation: Implement Executive Order 13877 and allow direct health care arrangements, health care sharing ministries, and other subscription-based services to count as eligible medical expenses for HSA purposes.

Extend new nationwide AHP options for impacted industries

Under current rules, self-insured association health plans (AHPs) seeking to operate nationwide must satisfy a patchwork of regulations in each state, including state insurance laws that conflict with other large group requirements or that limit or prohibit AHPs entirely. This patchwork of laws significantly limits industries from forming multi-state and nationwide AHPs. Developing a “class exemption” would create uniformity for AHPs seeking to operate in multiple states, creating more options for small businesses. As the economic fallout from the COVID-19 public health emergency sets in, small businesses will need every tool available to offer affordable coverage to their employees.

Recommendation: Create a class exemption to allow for nationwide AHPs in impacted industries.

Extend availability of Copper plans

Under current law, Copper (or “catastrophic”) plans are only available to individuals who are under the age of 30 or who otherwise qualify for a hardship exemption. These plans have lower premiums and higher cost-sharing requirements than other individual market coverage. Unfortunately, many individuals who do not qualify for Copper plans under current rules have been priced out of the individual market altogether. Many others who may be affected by the economic ramifications of the COVID-19 public health emergency may lose current coverage and need affordable options like Copper plans to be made available. Extending the availability of these plans to more Americans would give impacted individuals the ability to select plans that fit their budgets and circumstances.



Recommendation: Extend hardship exemptions to all individuals for the duration of any period where a public health emergency declaration based on an outbreak of COVID-19 is active, allowing all individuals to purchase Copper plans.

Suspend FDA regulations to allow hospitals to produce and use 3D-printed ventilator valves and other pandemic-related medical supplies

Hospitals may rapidly face medical supply shortages as the COVID-19 public health emergency begins to impact the nation's health care infrastructure, especially concerning supplies related to COVID-19 treatment. Hospitals and other facilities are largely unprepared for pandemic-level influxes of patients. In other countries, hospitals facing severe medical supply shortages have turned to engineers to 3D print COVID-19 related medical equipment, including ventilator valves and masks. The federal government should remove existing barriers for manufacturers and facilities to replicate this solution and fast-track the creation of much-needed medical supplies.

Recommendation: Waive FDA regulations and approval processes to allow hospitals and other medical facilities to 3D print vital medical supplies to cover emergency shortages for the duration of any period where a public health emergency declaration based on an outbreak of COVID-19 is active.

Remove barriers on third-party contractors in welfare eligibility process

As states begin to feel the economic ramifications of the COVID-19 public health emergency, they are likely to experience significant upswings in applications for welfare programs, such as Medicaid and food stamps. The Office of Personnel Management (OPM) has directed relevant agencies to clarify existing regulations and guidance to allow states to more widely use third-party contractors to assist with a broader array of responsibilities within the administration process in these programs. Unfortunately, these rule changes have not been finalized, and states have been unable to utilize this flexibility so far.

Recommendation: Implement OPM policy and allow states to contract with third-party contractors for all parts of the eligibility process in Medicaid, food stamps, and other welfare programs.

Codify flexible work rules to allow more individuals to work from home

Millions of Americans are self-employed and work as independent contractors. Many of these individuals do so because they need flexibility in their worksite, schedule, or other accommodations that typical on-site jobs cannot provide. Although federal law has a clear test to determine independent contractor status, states often use different tests that result in self-employed workers classified as independent contractors by the federal government and employees by state governments. These inconsistent laws make it difficult for these individuals to find work, hold back the economy, and place unemployment trust funds at risk.



Recommendation: Preempt states from adopting more stringent worker classification tests under the Federal Unemployment Tax Act (FUTA) and exempt workers from FUTA taxes if they fall outside the common law test to determine “employee,” consistent with the FUTA’s definition of “employee.”

Expedite approval for industry-sponsored apprenticeships needed in this crisis

In the wake of the COVID-19 public health emergency, industries across the country will need new, highly-skilled workers. Certain occupations will need an even more immediate response to keep up with growing demand, especially those related to fighting COVID-19. In particular, health care providers—such as nurses, physician assistants, ventilation technicians, industrial technicians, and others—will be desperately needed. Allowing individuals to obtain on-the-job training through industry-led apprenticeship programs will be critical to filling needs during this public health emergency.

Recommendation: Expedite the process to evaluate and recognize industry-recognized apprenticeship programs in response to the COVID-19 public health emergency.

Provide relief to employers on ACA mandate reporting

The employer mandate represents a significant administrative and financial burden on employers. Changes in employment status will be common in 2020 as employers struggle with the economic fallout from the COVID-19 public health emergency. This situation complicates preparation of 1095-C forms, as well as tracking and managing eligibility for group health plans.

Recommendation: Temporarily suspend 1095-C and 1094-C reporting requirements and take a non-enforcement position for all applicable large employers, as individuals no longer need 1095-C for tax filing purposes. At a minimum, this suspension should last for any tax year in which a public health emergency declaration based on an outbreak of COVID-19 is active. “Good faith effort” provisions for 1095-C and 1094-C preparation should also be made permanent to maintain reasonable accommodations for employers who make technical errors in the course of good faith efforts to comply with the reporting requirements. Additionally, the Treasury Department should create a path for employers to report on and prove compliance with ACA affordability requirements by complying with the statutory rule, rather than employer-adverse safe harbors. Finally, Section 1411 certification should be provided to employers within 14 days of the date on which an employee is granted a tax credit or cost-sharing subsidy on the Exchange and employers should be given an adequate opportunity to dispute the penalty at that time.

Allow employers to more easily provide telehealth services to employees

Throughout the COVID-19 public health emergency, telehealth services have served a critical role in providing needed care while reducing exposure. In many cases, employers may want to provide standalone telehealth benefits to their workers, but could expose those benefits to regulation as group health plans under ERISA, HIPAA, COBRA, the ACA, and the tax code.



Designating these benefits as “excepted benefits” would allow employers to provide new standalone benefits during this critical time—and during future emergencies—without running afoul of regulations that were not intended to cover such benefits. On-site health clinics are already classified as excepted benefits. The IRS could designate telehealth services offered by employers as on-site health clinics, provided that employers offer privacy and dedicated equipment (e.g., computers, tablets, phones, etc.) for employees wishing to use this service while at the workplace.

Recommendation: Designate telehealth benefits as “excepted benefits” under the broader category of on-site health clinics.