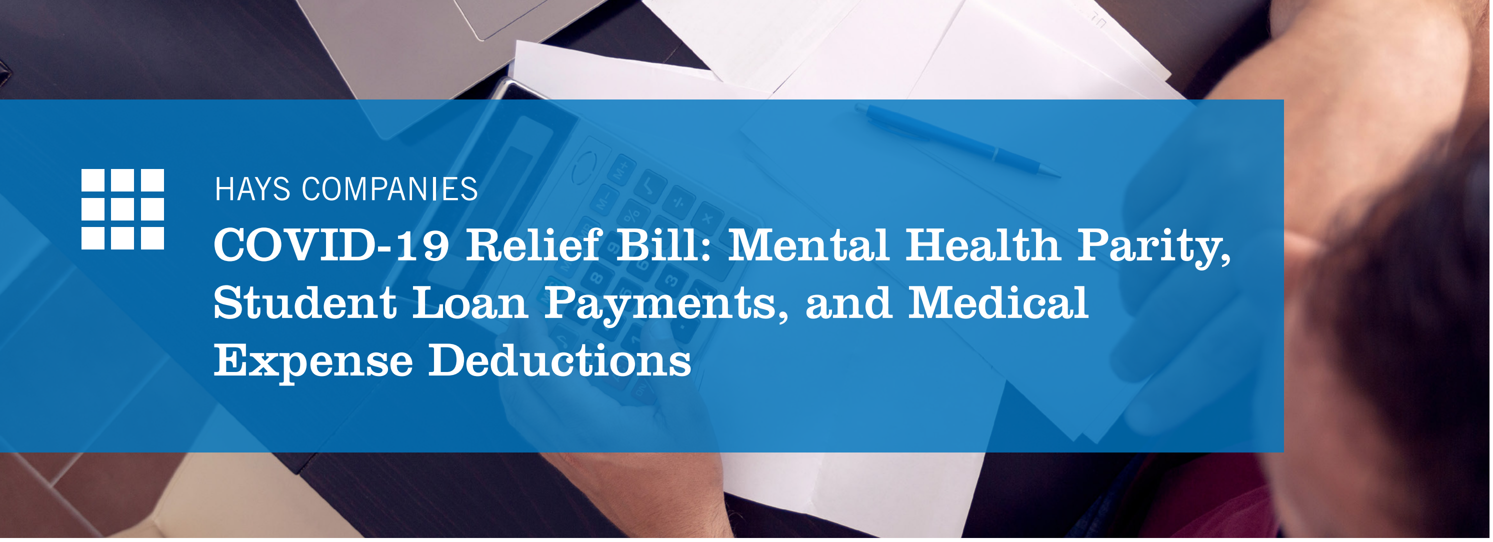

HAYS COMPANIES

COVID-19 Relief Bill: Mental Health Parity, Student Loan Payments, and Medical Expense Deductions

On December 27, 2020, President Trump signed Congress' $900 billion relief package designed to address the economic fallout from the COVID-19 crisis. The bill contains several important benefits-related provisions. Previous articles published by the Hays Compliance Team have addressed (1) changes to the rules governing dependent care assistance plans (DCAPs) and health flexible spending accounts (health FSAs), (2) the No Surprises Act (which addresses surprise medical bills), and (3) the extension of the tax credit for voluntarily providing paid leave pursuant to the Families First Coronavirus Response Act (FFCRA). This final article addresses two tax provisions contained in the bill (impacting employer reimbursements for student loan payments and medical expense deductions) and a provision amending the Mental Health Parity and Addiction Equity Act (MHPAEA).

MHPAEA Amendment:

The COVID relief bill amends the MHPAEA to impose certain requirements with respect to non-quantitative treatment limitations (NQTL). As a reminder, the MHPAEA generally requires parity between a plan's medical and surgical benefits and its benefits for mental health and substance use disorders (if the plan includes such benefits). Under the MHPAEA, the processes, strategies, evidentiary standards, or other factors a plan uses to apply NQTLs to mental health and substance use benefits must be comparable to, and applied no more stringently than, the processes, strategies, evidentiary standards, and other factors used to apply the NQTLs to medical or surgical benefits.

The regulations identify the following as examples of NQTLs:

- Medical management standards limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative
- Formulary design for prescription drugs
- Network tier design (if the plan has multiple network tiers such as preferred providers and participating providers)
- Standards for provider admission to participate in a network, including reimbursement rates
- Methods for determining usual, customary, and reasonable charges

Previous Hays Articles Published on the COVID-19 Relief Bill

1. COVID-19 Relief Bill: Temporary Changes to DCAP and FSA Rules
2. Fundamentals of the No Surprises Act
3. Optional FFCRA Paid Leave Tax Credit Extension

- Exclusions for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy protocols)
- Exclusions based on failure to complete a course of treatment
- Restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the plan

The amendments to the MHPAEA contained in the COVID relief bill provide:

- If a plan imposes NQTLs on mental health and substance use disorder benefits, then the plan or insurance carrier must perform and document comparative analyses of the design and application of those NQTLs to determine whether they comply with the MHPAEA requirement described above.
- If the obligation to perform the comparative analyses applies, then the plan or insurance carrier must make available the following information upon request of the regulatory agency:
    - The specific terms of the NQTLs applicable under the plan and a description of the mental health and substance use disorder benefits to which the NQTLs apply;
    - The factors used to determine that NQTLs will apply to mental health or substance use disorder benefits and medical or surgical benefits;
    - The evidentiary standards and other source or evidence relied upon to apply the NQTLs;
    - The comparative analyses of the NQTLs; and
    - The specific findings and conclusions reached as a result of the comparative analyses.

  The law authorizes the agencies to begin requesting this information as early as ***February 10, 2021*** (45 days after the date of enactment of the new COVID relief bill). It remains to be seen whether the agencies will act that fast.

- The regulatory agencies must request the forgoing information from not fewer than twenty (20) plans and/or insurance carriers per year. If a plan or insurance carrier submits insufficient information in response to a request, the regulatory agency must specify the information the plan or insurance carrier must submit to comply with the law. If the regulatory agency concludes that the plan is not in compliance, a 45-day corrective period will apply. If a failure is not corrected within that 45-day period, the regulatory agencies must notify all individuals enrolled in the plan that the plan has been determined to be non-compliant with the MHPAEA.
- The regulatory agencies are required to issue a "compliance program guidance document" for the purpose of assisting plan sponsors and insurance carriers in complying with the MHPAEA.

Student Loan Payments:

The CARES Act amended the Internal Revenue Code to exclude certain employer-provided student loan payments made as part of a Section 127 education assistance program from an employee's income. Specifically, the amendment to Section 127 excludes from income "the payment by an employer, whether paid to the employee or a lender, of principal or interest on any qualified education loan...incurred by the employee for education of the employee," provided such payments were made pursuant to an educational assistance program that satisfies the requirements of Section 127 and the total education assistance benefits provided do not exceed the annual limit of $5,250. Originally the student loan exclusion was set to expire on December 31, 2020 (i.e., only student loan payments made prior to January 1, 2021 could be excluded from an employee's income). The new COVID relief bill extends the expiration date of this exclusion to December 31, 2025.

Medical Expense Deductions:

The Internal Revenue Code authorizes an itemized tax deduction for unreimbursed medical expenses incurred by a taxpayer, but only if the amount of such expenses exceeds a certain threshold. In the past, the threshold has fluctuated between 7.5% and 10% of adjusted gross income. Starting with 2021, the threshold will be fixed at 7.5% of adjusted gross income. This information is relevant for employees who are considering whether to participate in health FSAs and other health plans because any amounts reimbursed under a health plan are not counted toward the 7.5% threshold.

The Hays Research and Compliance team will continue to provide further analysis and updates as additional information and federal guidance is made available.

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