



Medical Costs

# Senate Bill 1264 Offers Surprise Medical Bill Protection

**B**ALANCE, OR “surprise,” billing happens when an out-of-network health care provider bills a patient for the difference between what they charge for a service and what the insurance company pays for that service.

During the 2019 Texas Legislature, Senate Bill 1264 was passed to protect health plan members from surprise billing.

The law went into effect for services on or after Jan. 1, 2020, and applies to treatment situations where members don’t have a choice in where to get care, such as:

- Out-of-network providers who are practicing at in-network hospitals, birthing centers, ambulatory surgical centers and free-standing emergency medical care facilities.
- Out-of-network physicians and facilities, including hospitals and free-standing emergency medical care facilities, that provide

emergency services and supplies.

- Out-of-network diagnostic imaging and laboratory services that are provided in connection with a service from an in-network provider.

### How it works

SB 1264 encourages providers and insurance companies to come to an agreement on the price for services and removes the member from the process.

The bill also ensures that members are not responsible for amounts above their deductible, coinsurance and copayments in those situations listed above.

If the provider and insurer aren’t able to agree on the price, an independent reviewer called an arbitrator or mediator will review the claim.

The mediator will use set criteria, including benchmark pricing data, to choose between the provider’s or insurer’s price.

**Important note:** Out-of-network providers may ask members to sign a balance bill waiver that allows the provider to balance bill.

This form removes the protections of the law and must be signed by the provider and member 10 business days before services are provided.

A member has five business days after signing the waiver to revoke the agreement. It is very important that members read any paperwork a provider asks them to sign. ❖

### APPLICATION OF THE LAW

**SB 1264 applies to members of:**

- Fully insured HMOs
- Fully insured PPOs
- Texas Employee Retirement System
- Teacher Retirement System of Texas

**SB 1264 does NOT apply to:**

- Other self-funded plans
- Medicare
- The Federal Employee Plan
- Plans issued outside of Texas





IRS Order

## HDHPs Can Pay for COVID-19 Testing, Treatment

**T**HE IRS has issued new emergency guidance that allows employers and insurers to waive the cost of coronavirus testing and treatment for workers who are enrolled in high-deductible health plans (HDHPs).

Major health insurers reported that employers had been asking if they could make the change to their high-deductible plans without breaching IRS regulations regarding such plans.

Employers were concerned that free testing would technically prevent organizations and employees from contributing to linked health savings accounts (HSAs) on a pre-tax basis.

Specifically, the new guidance states that HDHPs with attached HSAs will not lose their plan status if they provide medical care services and items related to coronavirus testing or treatment even before an enrollee has met their deductible.

While the regulation does not require HDHPs to cover the testing and treatment without any out-of-pocket expenses by the enrollee, the plans can do so – and without breaching the rules regarding these plans.

The new rule could also pave the way for non-HDHPs like PPOs and HMOs to also provide coronavirus testing without out-of-pocket costs for their participants.

While there is no rule preventing them from doing so now, many of the country's large PPOs and HMOs have been reluctant to start offering free testing until they know how HSA plans would be affected.

Typically, enrollees in HDHPs with an attached HSA are required to pay all of their medicinal costs up to their deductible before the insurer will pay.

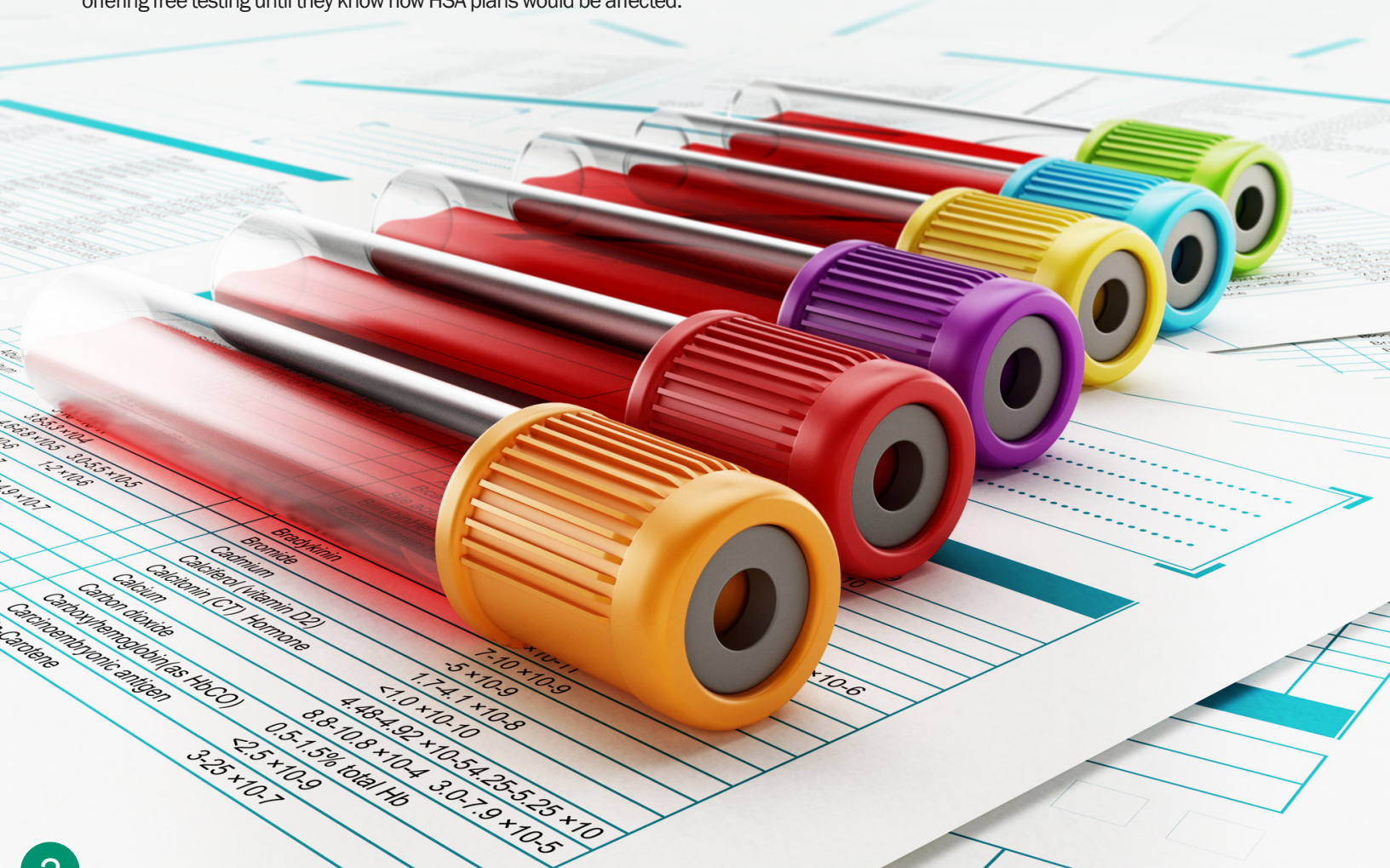
The Trump administration earlier issued another rule that allows HDHPs to foot the bill for certain preventative health services, such as vaccines and screenings for specific conditions like diabetes and high blood pressure, before the deductible is met.

In 2018, 23% of employees enrolled in employer-sponsored health insurance plans were enrolled in an HDHP with an HSA. The 2020 minimum annual deductible is \$1,400 for self-only HDHP coverage, and \$2,800 for family HDHP coverage.

The notice only applies to coronavirus and does not void any other requirements governing HDHPs and HSAs.

It states that "Individuals participating in HDHPs or any other type of health plan should consult their particular health plan regarding the health benefits for testing and treatment of COVID-19 provided by the plan, including the potential application of any deductible or cost sharing."

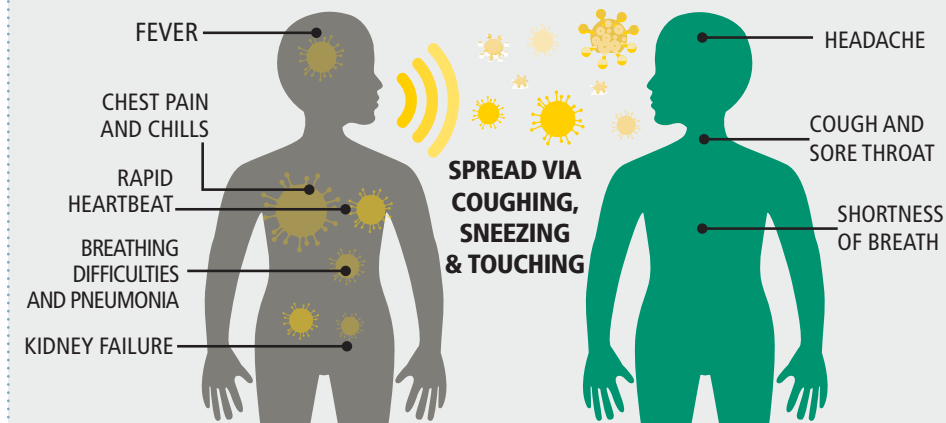
The decision came after the American Benefits Council, which includes many of the largest corporations in the country, sent a letter to the Treasury Department asking it to confirm that HDHPs could cover COVID-19 testing and treatment without enrollees first having to meet their deductibles. ❖





# Employer Guide for Dealing with the Coronavirus

## SYMPTOMS OF COVID-19 AND HOW IT SPREADS



**A**S THE outbreak of the coronavirus (COVID-19) spreads rapidly, employers need to consider what steps they can take to protect their workers while fulfilling their legal obligations.

Employers are in a difficult position because it is likely that the workplace will be a significant source of transmission among people. And if you have employees in occupations that may be of higher risk of contracting the virus, you could be required to take certain measures to comply with OSHA's General Duty Clause.

Also, if you have workers who come down with the virus, you will need to consider how you're going to deal with sick leave issues. And workers who are sick, or have family members who have been stricken, may ask to take time off under the Family Medical Leave Act.

### COVID-19 explained

According to the Centers for Disease Control, the virus is transmitted from coughing, sneezing and touching, and it enters through the eyes, nose and mouth.

Symptoms include a runny nose, a cough, a sore throat, and high temperature. After two to 14 days, patients will develop a dry cough and mild breathing difficulty. Victims also can experience body aching, gastrointestinal distress and diarrhea.

Severe symptoms include a temperature of at least 100.4°F, pneumonia, and kidney failure.

### Employer concerns

**OSHA** – OSHA's General Duty Clause requires employers to protect workers against "recognized hazards" to safety or health which may cause serious injury or death.

According to an analysis by the law firm Seyfarth Shaw: If OSHA can establish that employees at a worksite are reasonably likely to be exposed to the virus (likely workers such as health care providers, emergency responders, transportation workers), OSHA could require the employer to develop a plan with procedures to protect its employees.

**Protected activity** – If you have an employee who refuses to work if they believe they are at risk of contracting COVID-19 at work due to the presence or probability that it is present there, what do you do?

Under OSHA's whistleblower statutes, the employee's refusal to work could be construed as "protected activity," which prohibits employers from taking adverse action against them for their refusal to work.

**Family and Medical Leave Act** – Under the FMLA, an employee working for an employer with 50 or more workers is eligible for up to 12 weeks of unpaid leave if they have a serious health condition. The same applies if an employee must care for a family member who has

been stricken.

The virus would likely qualify as a serious health condition under the FMLA, which would warrant unpaid leave.

### What to do

Here's what health and safety experts are recommending employers should do:

- Consider restricting foreign business trips to affected areas for employees.
- Perform medical inquiries to the extent legally permitted.
- Impose potential quarantines for employees who have traveled to affected areas. Ask them to get a fitness-for-duty note from their doctor before returning to work.
- Train your staff about how to reduce the chances of contracting the virus, and what to do if they think they have caught it.

If an employee may have the virus, experts recommend that you:

- Advise them to stay home until symptoms have dissipated.
- Advise them to seek out medical care.
- Make sure they avoid contact with others.
- Contact the Centers for Disease Control and local health department immediately.
- Contact a hazmat firm to clean and disinfect the workplace.
- Grant leaves of absence and work-from-home options for anyone who has come down with the coronavirus.

Now that we are in the midst of a pandemic, consider whether or not to continue operating. If you plan to continue, you should:

- Set a plan for how to continue operations.
- Assess your staffing needs during the pandemic.
- Consider alternative work sites or let staff work from home.
- Communicate with suppliers about possible disruptions.
- Consider alternative vendors should yours be unable to work. ❖



## Affordable Care Act

# Congress Eliminates the ‘Cadillac’ and Other ACA Taxes

**B**EFORE THE new year, Congress passed legislation repealing the so-called “Cadillac tax” on generous group health plans, as well as two other taxes, finally putting to bed an issue that has plagued the Affordable Care Act since its inception.

President Trump signed the measure and officially put an end to the much-maligned tax.

Although it had not yet been implemented, employers didn’t like the Cadillac and labor unions came out against it as well.

It was so unpopular that Congress voted twice to delay implementation, which was originally set to start in 2018. The latest start date was 2022.

As originally enacted, the Cadillac tax is a 40% levy on the most generous employer-provided health insurance plans – those that cost more than \$11,200 per year for an individual policy or \$30,150 for family coverage.

It was designed to only tax the portion of the premium that was above the threshold.

### Effect of repeal on group plans

The tax would have been levied on health plans, the legal entities through which employers and unions provide benefits to employees.

It would have been paid by employers, but its impact on employees would be indirect and would have depended on how firms and health plan managers responded to the tax in offering and designing benefits.

None of these issues now need to concern employers offering group plans.

The tax was eliminated as part of a \$1.4 trillion year-end budget bill that President Trump signed in order to keep the government open.

Below are all the ACA-related taxes that the legislation eliminated:

### THREE LEVIES ABOLISHED

- The Cadillac tax, which had been expected to raise as much as \$197 billion over 10 years.
- Starting in 2021, the health insurance tax, which had been projected to raise \$150 billion over the next decade, and
- The 2.3% excise on the sale of medical devices, which had been expected to generate up to \$25.5 billion in the next 10 years.



**DEAD AND BURIED:** Cadillac Ranch has a new addition after the final gasp of the Affordable Care Act’s Cadillac tax.

Produced by Risk Media Solutions on behalf of Barnard Insurance Group. This newsletter is not intended to provide legal advice, but rather perspective on recent regulatory issues, trends and standards affecting health insurance, voluntary benefits, 401(k) plans and other employee benefits. Please consult your broker or legal counsel for further information on the topics covered herein. Copyright 2020 all rights reserved.