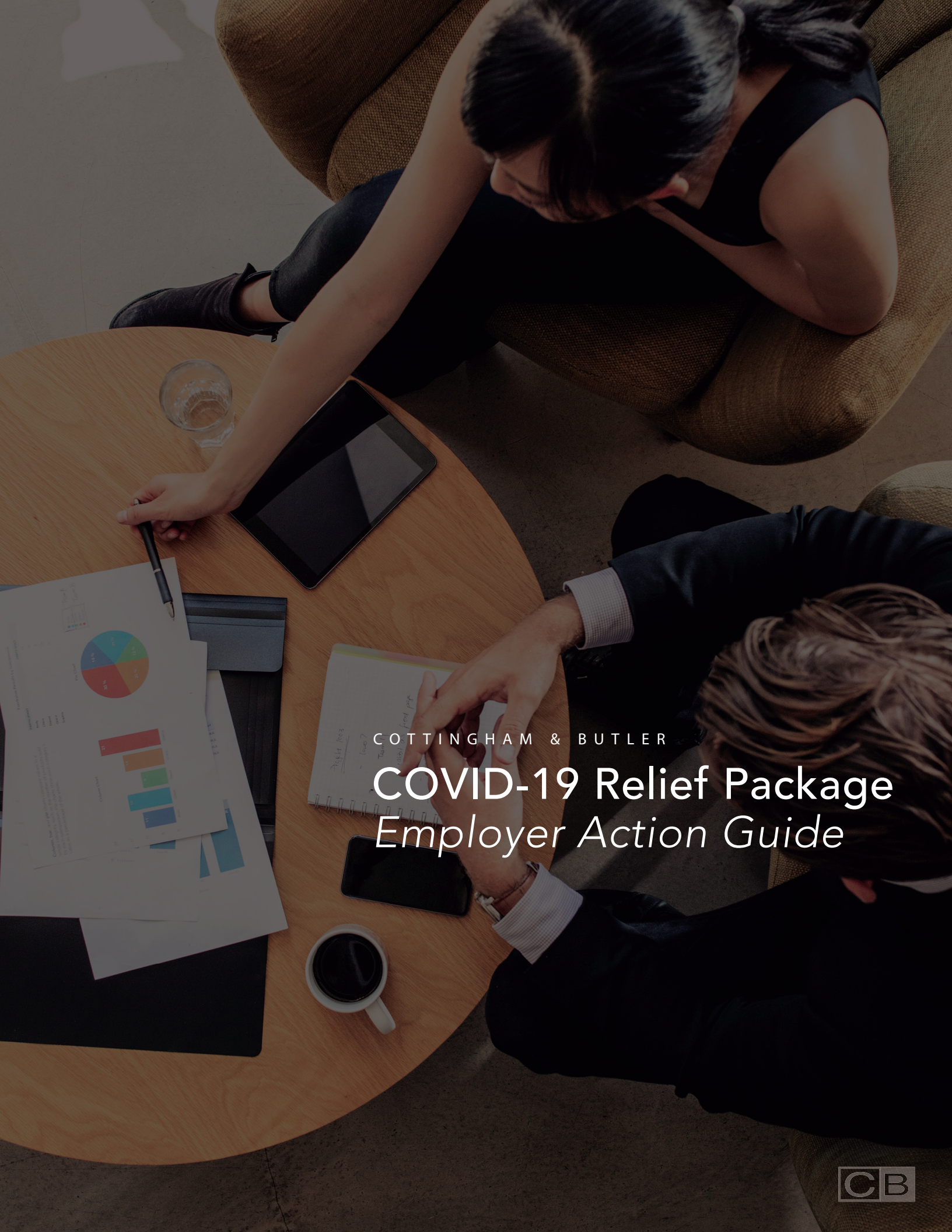




COTTINGHAM & BUTLER

COVID-19 Relief Package *Employer Action Guide*

On December 27th, the Consolidated Appropriations Act, 2021, was signed into law. The legislation includes several new provisions and updates that could significantly impact an employers' health plan and employee benefits strategy. Following is a short summary of the new and updated provisions, along with actions employers should respond to.

SUMMARY

Sense of Urgency	Applicable Provisions	Action Required
 High	• Paycheck Protection Program revamped until 3/31/2021, adjustments to forgiveness, and 2nd loans available. • Employee Retention Credit eligibility loosened significantly, credits increased, extended until 6/30/2021. • FFCRA Leave Mandate ended 12/31/20, but tax credits extended until 3/31/2021. Voluntary for employers. • Health and Dependent Care FSA rules greatly loosened to help employees use balances. Adoption optional.	• If downturn in business has occurred, new PPP or ERC rules may allow financial assistance. Must reach out to lender & tax advisor ASAP to take advantage. • If subject to FFCRA leave laws, decision on continuation & communication to employees on go forward plan needed. • If offering a Health or Dep Care FSA, must decide which (if any) temporary provisions will be amended into plan and communicate to employees.
 Moderate	• New Mental Health Parity comparative analysis to be available for HHS audit by as early as Feb 2021. • New Health Plan Reporting will become effective for 2022 plan years, requiring extensive health plan data to be reported to government on an annual basis. • New Surprise billing law goes into effect 1/1/2022, requiring health plans to be able to administer new arbitration process for surprised out-of-network bills.	• Sit tight for now, but more information to come on all of these new rules. Employer is the party subject to the compliance rules, so coordinating with vendors to assist will be key to being compliant with each of these items.
 Low	• Unemployment Assistance expanded until mid-March with similar provisions to CARES Act • Direct checks being sent to tax payers, but lower amounts than first round • Health plan service providers (brokers/carriers/vendors) required to disclose all direct and indirect compensation prior to service contracts going effective in 2022. • Gag clauses removed from carriers/networks and providers to allow health plans to get access to all claims data for cost and quality transparency.	• Employers tasked with reporting non-compliance of compensation disclosure to DOL. No known penalty at this point to employers for not reporting, or formal process to do so. • Employers not allowed to do business with carrier/TPA/network that will not provide data upon request or transparency tools to members. No known penalty at this point to employers, mainly TPA/carrier action required.



Limiting Surprise Medical Billing

The legislation puts new rules in place to attempt to limit surprise out-of-network medical bills, which have become more common.

The rules require payers (i.e., insurance companies and health plans) to agree to an out-of-network payment (the “qualifying payment amount”) for certain kinds of medical services. If the parties cannot agree on the payment amount, the dispute will go to a pre-defined arbitration arrangement. Importantly, the plan will be required to cover services subject to the rules on an in-network cost-sharing level and participants will be protected from balance billing.

WHAT EMPLOYERS NEED TO KNOW

- The new requirements are scheduled to go into effect 1/1/2022. There will be significant regulatory guidance developed during 2021 prior to the effective date.
- The participant balance billing protections apply to some, but not all, medical services, including: most emergency services provided out-of-network, air ambulance services, and non-emergency services (such as radiology services) performed by an out-of-network provider at an in-network facility.
- States may impose more strict restrictions on surprise billing.
- There will be some employee notification requirements. However, employers will not typically have direct access to much of the payment information contained in an employee disclosure, so they will need to rely on their carriers or plan administrators to provide, or assist with, required notifications.



Temporary Special Rules For Additional Section 125 And 129 Reimbursement And Election Change Flexibility

Previous legislation and regulatory guidance had provided significant flexibility regarding reimbursements and election changes in Section 125 Cafeteria plans, HFSA's and Section 129 DCAPs. The latest COVID-19 legislation gives employers the option to offer even more flexibility to HFSA and DCAP participants.

- Carryovers Allowed for HFSA and DCAP – For plan years ending in 2020 or 2021, an employer may allow participants to carry over unused HFSA or DCAP balances to the next plan year.
- Extended Grace Periods Allowed – An employer may implement a HFSA or DCAP grace period of up to 12 months for plan years ending in 2020 or 2021.
- Election Changes – Employers may now allow employees to make prospective changes to HFSA or DCAP elections for any plan years ending in 2021, even if the employee has not experienced a recognized election change event.

- Special Rule for DCAP Participants with Dependents Who Age Out – The legislation contains a temporary rule that allows a plan to reimburse expenses for dependents who have not attained age 14 under certain circumstances.
- HFSA Post-Termination Reimbursements – An employer may reimburse HFSA expenses incurred after termination by an employee who terminates from the plan during calendar years 2020 or 2021.

WHAT EMPLOYERS NEED TO KNOW

Employers have the option to implement some or all of the flexibility provided or could chose not to change their plans at all. Plans may be amended retroactively to implement any of all of these provisions. The plan amendment must be made no later than the last day of the first calendar year beginning after the end of the plan year in which the amendment is effective. For example, for changes made to a plan with the plan year ending 12/31/2020, the amendment must be made by 12/31/2021.

New Health Plan Reporting Rules

The legislation also includes significant new health plan reporting requirements regarding prescription and other health plan cost information. These requirements go into effect beginning in 2022. Plans will be required to report the following information:

- Plan year dates.
- The number of participants and beneficiaries.
- Each State in which the plan is offered.
- Information on the 50 brand prescription drugs most frequently dispensed for claims paid by the plan.
- Information on the 50 most costly prescription drugs with respect to the plan by total annual spending.
- The 50 prescription drugs with the greatest increase in plan expenditures.
- Total spending on health care services broken down by— hospital costs; health care provider and clinical service costs, for primary care and specialty care separately; costs for prescription drugs; and other medical costs, including wellness services, and spending on prescription drugs by the participants.
- The average monthly premium— paid by employers on behalf of participants and beneficiaries; and paid by participants and beneficiaries.
- Information about the impact on premiums from rebates, fees, and any other remuneration paid by drug manufacturers to the plan or its administrators or service providers.

WHAT EMPLOYERS NEED TO KNOW

Employer plan sponsors will be responsible to ensure that required reporting is completed for their plans, but again, much of the information required will need to be provided by carriers and plan administration vendors. We expect significant regulatory guidance on this reporting requirement to be released during 2021, which will help employers better understand exactly what needs to be reported.



FFCRA Paid Leave Tax Credit Extension Without Mandate Extension

The legislation does NOT extend the paid leave provisions of the Families First Coronavirus Relief Act (FFCRA) beyond December 31, 2020. However, employers may voluntarily allow employees to take any remaining FFCRA leave through March 31, 2021 and continue to receive the applicable tax credits for such leave if they were previously eligible for such tax credits. Note that the Act does NOT provide additional amounts of paid leave under the FFCRA if employees have already exhausted their leave, nor mandate an employer provide additional time regardless of when FMLA timeframes reset (i.e. calendar year resets).

WHAT EMPLOYERS NEED TO KNOW

If previously offering FFCRA related leave, employers have the option to continue to offer into 2021 to take advantage of tax credit offering through March 31st. This is a voluntary option for employers, however, decisions should be communicated with employees regardless of the direction chosen. This is especially important if employees are currently on FFCRA leave currently and will not return before 1/1/2021.



Unemployment Benefits Funding And Extension

The legislation expands unemployment assistance, including the amount of time that unemployed workers can collect unemployment insurance benefits by an extra 11 weeks. The CARES Act had extended the unemployment benefit period by 13 weeks for individuals receiving unemployment benefits through their state programs, as well as those eligible to receive benefits through the Pandemic Unemployment Assistance Program. The additional 11 weeks of benefits extends to 24 weeks the extended unemployment eligibility period.

Additionally, it restores the supplemental federal unemployment benefit provided under the CARES Act, though at a lower weekly rate of \$300 per week to unemployed workers who are eligible for benefits under their state's unemployment programs and/or the Pandemic Unemployment Assistance Program. The supplemental federal unemployment benefits are set to expire on March 14, 2021.

WHAT EMPLOYERS NEED TO KNOW

No action required. Some employers that had to lay off employees may use this as an opportunity to communicate and add value to those individuals.

PPP Aid For Businesses

The legislation includes approximately \$325 billion in funding to the Small Business Administration (SBA) to assist U.S. businesses that have been affected by the COVID-19 pandemic. Specifically, the bill allocates \$284 billion in funding to replenish the Paycheck Protection Program (PPP), which provides forgivable small business loans to eligible applicants.

Under the bill, certain companies that had already applied for, received and exhausted PPP funds will be eligible to apply for another PPP loan. To be eligible for a second PPP loan, a small business must have less than 300 employees and have sustained at least a 30% loss in revenue during any quarter of 2020. Additionally, small 501(c)(6) organizations with 150 or fewer employees that are not lobbying organizations would be eligible for a PPP loan with this round of funding.

The bill also provides the following with regard to the PPP:

- Expansion of expenses eligible for loan forgiveness to include supplier costs and investment costs related to modifying facilities and obtaining personal protective equipment for safety
- Simplified loan forgiveness process for businesses that have borrowed \$150,000 or less in PPP loans
- Confirmation that business expenses paid for with PPP loan funds are tax deductible

WHAT EMPLOYERS NEED TO KNOW

Businesses interested in applying for a PPP loan should contact their lender for more information on how the new provisions may benefit them.

Employee Retention Program

The legislation includes approximately \$325 billion in funding to the Small Business Administration (SBA) to assist U.S. businesses that have been affected by the COVID-19 pandemic. Specifically, the bill allocates \$284 billion in funding to replenish the Paycheck Protection Program (PPP), which provides forgivable small business loans to eligible applicants.

Key changes include:

- Time period credit is available extended to end of June 2021.
- Eligibility requirements adjusted from 50% decline in gross receipts to 20% decline in gross receipts, and continuing for any business impacted by suspension due to governmental order.
- Maximum credit amount increased from annual limit of 50% of \$10,000 in qualified wages to 70% of \$10,000 in qualified wages per quarter in 2021.
- Working employee credits extended up to companies of 500 or less employees, compared to the previous 100 employee cutoff.
- PPP Coordination – Companies that received a PPP loan are now eligible to also apply for Employee Retention Credits, applying retroactively to 3/12/2020. However, qualified wages paid using PPP dollars are not eligible for Employee Retention Credits.
- Expanded eligibility to public colleges or universities, organizations with principal purpose of medical or hospital care, and certain Federal instrumentalities (i.e. Federal credit unions).

WHAT EMPLOYERS NEED TO KNOW

Businesses interested in utilizing the Employee Retention credits should contact their tax advisor for more information on how the new provisions may benefit them.

Mental Health Parity

The legislation includes a section titled “Strengthening Parity in Mental Health and Substance Use Disorder Benefits” that introduces additional compliance requirements under the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA).

The new provisions apply to group health plans and health insurance issuers that offer medical and surgical benefits and MHSUD benefits and impose specific analytical requirements on the NQTLs on those benefits. Under the new law:

- Covered plans and issuers must perform and document comparative analyses of the design and application of the NQTLs that apply to MHSUD and medical/surgical benefits.
- Upon request, beginning 45 days after the enactment of the law, make the analyses and other information available to the applicable federal and state authority. The analyses must:
 - o Describe the terms of each NQTL and the benefits to which they apply for each classification (in-patient, in-network) under the MHPAEA.
 - o Include the factors used to determine the NQTLs that will apply to the MHSUD benefits and the evidentiary standards used to design and apply the NQTLs to the benefits.

- o The comparative analyses must demonstrate that the processes, strategies, evidentiary standards, and other factors used to apply the MHSUD benefits are not, in design or in operation, more stringent than the limitations on medical or surgical benefits and disclose the findings of the analyses.

WHAT EMPLOYERS NEED TO KNOW

Plan sponsors and insurers must be prepared to provide the comparative analyses to an enforcing federal agency (the Department of Labor, Health and Human Services, or the Treasury) and to provide them with further information on request. More information will be released on this in the near future to provide employers with additional resources on top of the self-compliance checklists for MHPAEA already out on the DOL website.

Contact Us If You Have Questions

Cottingham & Butler will continue to monitor developments and provide assistance as needed. If you have any questions, please contact your Cottingham & Butler representative.

Please be advised that Cottingham & Butler does not engage in the practice of law and that information provided is not intended to be construed as legal or tax advice.