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March 16, 2020

The Honorable Senator Chuck Grassley
Chairman, Senate Finance Committee
135 Hart Senate Office Building
Washington, DC 20510

The Honorable Senator Ron Wyden
Ranking Member, Senate Finance Committee
221 Dirksen Senate Office Bldg.
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Wyden,

On behalf of Mercer, a global human resources consulting and actuarial firm that helps thousands of U.S. employers provide health and retirement benefits to millions of Americans, I want to thank congressional leaders and the Trump administration for creating strong, bipartisan coronavirus response legislation that will provide immediate relief to American workers and their families. As Congress considers additional legislative measures, Mercer offers the following suggestions to ensure employers have the proper resources and guidance to support their employees during this ongoing crisis.

Mercer supports mandatory, no participant cost-sharing coverage in all health care plans and programs – public and private – for COVID-19 testing and related services. In addition, we support providing paid leave to those directly affected by the virus while also reimbursing small businesses for the unexpected financial burden related to paid leave. Further, an extension of unemployment insurance benefits will provide much needed financial relief to families across the country struggling to make ends meet.

Some employers are already at the forefront of voluntary action to provide paid leave to their employees – often with programs that go well beyond what is required by law – and to protect the safety and health of their employees and families by removing cost barriers to care.

To that end, we greatly appreciate recent guidance from the IRS (Notice 2020-15) confirming that the provision of all medical care services received and items purchased associated with testing for and treatment of COVID-19 will not disqualify (i) a high-deductible health plan from being linked with a health savings account (HSA), or (ii) an individual from being eligible to make or receive HSA contributions.

We urge the Administration and Congress to eliminate additional barriers to the screening, testing and treatment of COVID-19 by deeming pre-deductible telemedicine services to be HSA-compatible and therefore available to individuals without cost sharing. Moreover, we believe that this standard should apply to all telemedicine services, not just those that are COVID-19 related – through at least 2020, if not permanently. This policy would help slow the spread of the virus by encouraging individuals not to visit medical providers for non-emergency care. In addition, telemedicine providers may not be able to differentiate between services related to COVID-19 testing/screening and for other services, which would severely complicate implementation of an HSA-compatible no cost-sharing policy for only testing and treatment related to COVID-19.

We also ask that telemedicine services be categorically and permanently deemed an “excepted” benefit under the Health Insurance Portability and Accountability Act (HIPAA) and therefore excluded from burdensome compliance standards, similar to the treatment of Employee Assistance Plans (EAPs) based on 2014 guidance. This change is particularly important to facilitate access to stand-alone telemedicine services – that is, telemedicine services that are not a component of an employer’s comprehensive medical plan – for employees who may not otherwise be eligible for or enrolled in the employer’s comprehensive medical plan. This is particularly important for many employers’ part-time employee population, since many employers have expressed serious interest in providing these services to part-timers, but are deterred by the compliance obstacles.

This enhanced telemedicine policy aligns with President Trump’s March 14 mobilization of federal resources plan, which, among other things, gives the Department of Health and Human Services the authority “to waive certain laws to enable telehealth, remote doctors’ visits, and hospital check-ins.” With respect to HSA-qualifying HDHPs, however, the Treasury Department and the IRS would need to make corresponding changes to its rules, and we strongly encourage them to do so.

Any consideration the administration can give to delaying employers’ reporting duties under the Affordable Care Act (the deadline for submission of electronic Forms 1094-C is March 31 for electronic filers) would also be greatly appreciated.

Consideration should also be given to allowing employers greater flexibility to meet reporting and disclosure obligations through electronic means. Department of Labor guidance has not been updated for health care plans since 2002, and the communication vehicles utilized by the large majority of Americans have shifted greatly towards electronic formats. This change would decrease costs, increase efficiency, and allow communication with much greater speed than paper formats.

With respect to the paid sick leave and expanded FMLA rights provisions in HR 6201 that apply to employers with “fewer than 500 employees,” we believe it would be helpful to clarify whether this threshold standard applies on a controlled group basis.

It is critical that Congress and the administration turn next to a package to help affected employers provide additional assistance to their employees. We ask that any such legislation addressing paid leave issues recognize that many employers have operations in multiple states and municipalities. The development of myriad state and local paid leave laws has been an unwieldy compliance challenge for employers, well before the COVID-19 pandemic, which is likely to spur more state and local requirements. Mercer believes it is critically important for Congress to ensure that employers be able to provide nationally uniform and consistent leave to their employees.

Mercer will continue to work closely with our clients to support their economic resilience throughout the pandemic. We also stand ready to assist immediately on the urgent policy responses you are pursuing to help America’s working families, businesses and communities. As always, please let us know how we can best support your vital work on behalf of the country.

Sincerely,



Martine A. Ferland

President and CEO, Mercer