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## DOJ Issues Guidance on Opioid Addiction and the ADA

On April 5, 2022, the U.S. Department of Justice (DOJ) issued guidance on how the Americans with Disabilities Act (ADA) can protect individuals with opioid use disorder (OUD) and other drug addictions from discrimination.

### ADA Background

The ADA is a federal law that prohibits employers with 15 or more employees from discriminating against individuals based on disability.

### Drug Addiction as a Disability Under the ADA

The DOJ's guidance explains that individuals with OUD typically qualify for ADA protection because drug addiction is a physical or mental impairment that often substantially limits one or more major life activities. Individuals in recovery from drug addiction may also qualify for ADA protection if they would be limited in a major life activity without treatment or services to support recovery.

### Exception for Current Illegal Use of Drugs

The ADA's protections do not apply if an individual is engaged in the "current illegal use of drugs." This is generally defined as illegal use occurring recently enough to justify a reasonable belief that this use is current or that continued use is a real and ongoing problem. The definition does not include the use of a prescribed medication under the supervision of a licensed health care professional.

### Workplace Policies

The DOJ guidance clarifies that employers may implement reasonable policies or procedures, including drug testing, designed to ensure individuals are not engaging in current illegal drug use.

Preventing discrimination based on drug addiction is a key part of the DOJ's efforts to combat the opioid epidemic.



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## Cybercrime and Benefits Plans

According to recent estimates from the University of Maryland, a cyberattack occurs every 39 seconds. Data breaches and cyberattacks are daily headlines—and employee benefits plans are no exception to that threat. In fact, employee benefits plans are even more vulnerable as the coronavirus pandemic continues; organizations and benefits providers are relying heavily on electronic access, ultimately creating new vulnerabilities. Some examples of cyberthreats include phishing, malware and ransomware attacks.

Virtually any type of employee benefits plan is vulnerable to hackers. These plans can be exposed to risks relating to privacy, security and fraud. Sensitive information contained in benefits plans is valuable to cybercriminals.

Lost or stolen mobile devices, laptops and flash drives that hold personal information are additional tangible threats to benefits plans. These situations are especially concerning now that more employees are working from home. Given the new remote-working landscape as a result of the pandemic, plan sponsors should, at minimum, consider updating work-from-home policies to include cybersecurity clauses.

Overall, always be prepared for the worst to happen. In the unfortunate event of a security breach, it's important to be prepared with a basic communication and action plan. Reach out to discuss your cybersecurity concerns, including cyber risk coverage levels and general best practices.



## Telehealth Coverage for HDHPs Extended

A spending bill recently signed into law extends the ability of high-deductible health plans (HDHPs) to provide benefits for telehealth or other remote care services before plan deductibles have been met without jeopardizing health savings account (HSA) eligibility. This extension applies to any telehealth services from April 2022 through the end of the year.

### Background

HSA contribution rules limit the types of health coverage that eligible individuals may have. As a general rule, telemedicine programs that provide free or reduced-cost medical benefits before the HDHP deductible is satisfied are disqualifying coverage for purposes of HSA eligibility.

However, effective in 2020, for plan years beginning before 2022, the Coronavirus Aid, Relief and Economic Security Act (CARES Act) allowed HDHPs to provide benefits for telehealth or other remote care services before plan deductibles have been met. This meant that HDHPs could provide coverage for telehealth services before the minimum deductible was reached without jeopardizing plan participants' eligibility for HSA contributions. This rule expired for plan years beginning in 2022.

### Impact of the Extension

Under the extension, HDHPs may choose to waive the deductible for any telehealth services from April 2022 through the end of 2022 without causing participants to lose HSA eligibility. This provision is optional; HDHPs can continue to choose to apply any telehealth services toward the deductible.



**Note** that telemedicine services provided between Jan. 1, 2022, and April 1, 2022, must still be counted toward the HDHP deductible to avoid impacting participants' eligibility for HSA contributions.

# Sick Workers Should Stay Home

When sick employees come to work, they can potentially spread their illness throughout the office. Learn why sick workers should stay home, especially during the COVID-19 pandemic, by watching the video below.



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Marshall & Sterling's Employee Benefits Team will continue to provide you with updates and information regarding important issues. Should you have specific questions or need more information, please contact us.

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