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For HDHPs, IRS Confirms Pre-Deductible COVID-19 Testing Coverage Will End Next Year

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In the most recent sign that special COVID-19 benefit plan rules are drawing to a close, last Friday, the IRS issued Notice 2023-37, which clarifies the scope of COVID-19 testing and treatment that can be provided on a pre-deductible basis under a high deductible health plan (HDHP) without impacting a participant's ability to contribute to a health savings account (HSA). As a reminder, if an HDHP covers medical items and services before the participant satisfies the IRS minimum deductible (self-only or family), that coverage may disqualify the participant's HSA contributions. Notice 2023-37 can be downloaded here.

Can an HDHP continue to provide pre-deductible coverage of COVID-19 testing and treatment without impacting HSA eligibility?

Yes, for a limited time. Notice 2023-37 confirms that an HDHP can provide pre-deductible coverage of COVID-19 testing and treatment for plan years ending on or before December 31, 2024. For subsequent plan years, the HDHP may continue to cover COVID-19 testing and treatment subject to the plan's minimum deductible. In essence, this guidance puts a deadline on IRS Notice 2020-15, which provided that an HDHP could cover medical items and services relating to COVID-19 testing and treatment without impacting participant eligibility to make HSA contributions.

As an alternative, can an HDHP treat COVID-19 testing as a screening test covered by the preventive care safe harbor?

No. An HDHP may cover, on a pre-deductible basis, items and services that fall within the preventive care safe harbor without disqualifying the participant's HSA contributions. In Notice 2004-23, the IRS identified screening services for several infectious diseases covered by the preventive care safe harbor. In Notice 2023-37, the IRS clarified that screening for COVID-19 testing is not covered by the infectious disease screening services listed in Notice 2004-23, reasoning that the list does not include screenings for common and episodic illnesses, such as the flu.

Can an HDHP provide pre-deductible coverage of "A" and "B" items recommended by the USPSTF on or after March 23, 2010, regardless of whether cost-sharing is imposed?

Yes. In Notice 2013-57, the IRS confirmed that an HDHP could provide pre-deductible coverage of ACA-mandated preventive care services required to be covered without participant cost-sharing. Readers of our prior blog may remember that in response to the district court's decision in *Braidwood Management Inc. v. Becerra*, the agencies confirmed that until further notice, an HDHP could provide pre-deductible coverage of USPSTF-recommended "A" and "B" services on or after March 23, 2010, regardless of whether those services were subject to participant cost-sharing.

In Notice 2023-37, the IRS confirmed that if the USPSTF were to recommend COVID-19 testing with an "A" or "B" rating, an HDHP could treat COVID-19 testing as preventive care eligible for pre-deductible coverage without respect to whether cost-sharing is imposed. However, because the USPSTF has yet to recommend COVID-19 testing as an "A" or "B" service, this prospect remains hypothetical for the time being.

Takeaways for plan sponsors?

Recent years have seen a flurry of temporary changes regarding the scope of the pre-deductible coverage rules for HDHPs, including a temporary extension of the telehealth safe harbor. The IRS's recent guidance on COVID-19 testing and treatment marks another (time-limited) eligible expense that plan sponsors will need to track as they monitor the scope of permissible expenses that can be covered under an HDHP before a participant satisfies the IRS minimum deductible.

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