

COVID-19 Testing and HSA Eligibility

MARCH 11, 2020

Due to the recent COVID-19 (coronavirus) outbreak, several state insurance commissioners, including Oregon, California, New York, Georgia, Maryland, and Washington, have recently issued directives to insurance carriers operating in their states to waive health plan cost-sharing, such as co-payments, coinsurance, or deductibles, for in-network COVID-19 laboratory testing, and in some cases office visits and emergency room visits related to the illness. Other state insurance commissioners and the insurers they regulate, are expected to follow. Vice President Mike Pence, who has been charged with leading the federal government's COVID-19 response, has announced that testing was deemed an "essential health benefit" within the meaning of the Affordable Care Act rules, which could impact individual and small group insurance plans, as well as Medicaid, but does not create new requirements for large group or self-insured employer health plans.

Employers with self-insured health plans are also exploring ways in which their health plan designs can be modified to make it easier for plan participants to seek testing and treatment for COVID-19 without incurring out-of-pocket expenses or surprise medical bills from out-of-network providers or facilities. Some of these solutions include waiver of copays, coinsurance, and deductibles; free home delivery of prescription drugs and liberalized prescription drug refill rules; and free or reduced-cost telehealth benefits.

One open question is how this expansion of coverage will impact an individual's eligibility to make contributions to a Health Savings Account (HSA). Under federal tax rules, an individual is eligible to contribute to an HSA for any month if the individual is covered under a high-deductible health plan (HDHP) for such month, and has no other disqualifying coverage or insurance. The Internal Revenue Service (IRS) has previously issued guidance that an HDHP may provide first-dollar coverage for preventive care benefits without disqualifying an otherwise HSA-eligible individual. Guidance dating back to 2004 includes a list of safe-harbor preventive care screening services that can be considered preventive care for this purpose, including certain types of infectious disease screenings. However, this guidance does not extend to treatment for a disease that has already been diagnosed.

HSA guidance issued by the IRS in 2004 [Notices 2004-13 and 2004-50] provided safe harbors for covering preventive services for plan participants without any out-of-pocket expenses. Additionally, [guidance issued in 2019](#) further expanded the list of preventive services that can be provided first dollar under an HDHP without any out-of-pocket expenses, including prescription drugs for certain chronic conditions. Flu screenings are not listed. In

addition, all of the guidance makes clear that preventive care generally does not include any service or benefit intended to treat an existing illness, injury, or condition.

To remove barriers to COVID-19 testing and treatment, today (March 11, 2020) the IRS issued [Notice 2020-15](#) which clarifies that an HDHP can provide immediate benefits for medical care services and supplies to test for and treat COVID-19 without disqualifying the HDHP or the covered individual from making HSA contributions. This means that HDHPs can provide coverage for COVID-19 at reduced or no cost to participants who have not yet satisfied the HDHP deductible. In addition, the IRS clarified that vaccines are considered preventive care for purposes of these rules. There is no sunset date on the guidance and it will apply until further guidance is issued.

Employers are cautioned that, without further guidance from the IRS, offering care for other non-COVID-19-related reasons (e.g., for care of regular flu, or waiving cost sharing requirements for telemedicine services) prior to satisfaction of the HDHP deductible, will not fit squarely within an existing safe harbor or subsequent IRS guidance and could jeopardize an individual's HSA eligibility status.

Several industry trade groups, insurers and state insurance commissioners have contacted the IRS to discuss further expansion of ways in which the HSA preventive care safe harbor can be expanded to accommodate modifications to HDHP cost-sharing requirements to prevent or slow the spread of COVID-19.

Please contact a member of our Winston & Strawn Benefits Team for further information or if you have additional questions.

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