

## Employee Benefit Plan Health and Welfare Updates

APRIL 3, 2023

As March 2023 comes to a close, a lot has happened with respect to health and welfare employee benefit plans. Below is a quick summary highlighting some of the changes.

- On March 29, 2023, the United States Departments of Labor (DOL), Health and Human Services (HHS), and the Treasury (collectively, the Departments) issued FAQs about Families First Coronavirus Response Act (FFCRA), Coronavirus Aid, Relief, and Economic Security Act (CARES Act), and Health Insurance Portability and Accountability Act Implementation (HIPAA) Part 58. This guidance provides Q&As addressing issues such as COVID-19 vaccine and testing coverage requirements, diagnosis or treatment of COVID-19, and impacts on timing of COBRA elections and payments in light of the anticipated end of the COVID-19 National Emergency on May 11, 2023. [See <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-58> ] On a separate note, we learned that it is still permissible under Notice 2020-15 for telehealth to be provided at little or no cost (on a first dollar basis) by a high-deductible health plan without disqualifying an individual from making or receiving tax qualified contributions to a health savings account.
- On March 30, 2023, a federal judge in the United States District Court for the Northern District of Texas vacated portions of the Affordable Care Act, specifically the preventive coverage mandate. The judge held that actions taken by the United States Health and Human Services Department (HHS) to implement and enforce these coverage requirements were recommended by the United States Preventive Services Task Force, an entity that wasn't constitutionally appointed. The judge agreed with the plaintiffs that the Administrative Procedure Act authorized the court to vacate actions taken by the government pursuant to the Preventive Services Task Force's recommendations.

What complicates matters further is that the United States Preventive Services Task Force is not the exclusive agency that recommends preventive care. Health Resources and Services Administration and the Advisory Committee on Immunization Practices are also tasked with making preventive care recommendations, such as contraceptive care and recommendations for vaccinations.

The Justice Department and HHS are currently reviewing the decision.

- On March 28, 2023, updated Prescription Drug Data Collection (RxDC) Reporting Instructions for June 2023 and later were released. As we previously reported, the Consolidated Appropriations Act-21 (CAA) included a provision that requires group health plans (plans) and health insurance companies (issuers) to report prescription drug benefits, drug costs, and healthcare spending [see our article at <https://www.winston.com/en/benefits-blast/looming-deadline-for-pharmacy-reporting.html> ]. Although these instructions provided some answers to open questions, they did not answer all the questions.
- Earlier in March, the Internal Revenue Service (IRS) published guidance in the form of Q&As on the definition of “Medical Expenses” under Internal Revenue Code (Code) Section 213. In order for an expense to be deductible under the Code or subject to tax-exempt reimbursement through a group health plan, health savings account (HSA), health flexible spending arrangement (FSA), or health reimbursement arrangement (HRA), the cost of the item or service generally must meet the definition of “medical care” expenses under Code Section 213(d). There were no surprises or notable changes in this guidance. [See <https://www.irs.gov/individuals/frequently-asked-questions-about-medical-expenses-related-to-nutrition-wellness-and-general-health>]

Please contact your Winston & Strawn attorneys for more information.

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## Authors

[Amy Gordon](#)

[Joanna Kerpen](#)

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Amy Gordon



Joanna Kerpen

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