

IRS expands the scope of HSA preventive care for individuals with chronic conditions

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On July 17, 2019, the IRS issued new guidance that makes health savings accounts more user-friendly by allowing a high-deductible health plan to cover certain treatments for chronic conditions before the plan's deductible is satisfied. The IRS has considered issues related to preventive care for HSA purposes for some time. [IRS Notice 2019-45](#), released less than 30 days after the president signed an executive order directing the Treasury and IRS to issue guidance on the issue, provides welcome clarification.

Why HSAs?

HSAs provide a tax-favored means for individuals to save and pay for medical expenses not covered by their insurance plan. To be eligible to contribute to an HSA, the individual must be enrolled in a specially defined type of health plan called an HDHP and have no other health plan coverage (other than certain limited types of permitted coverage such as vision, dental, accident, specified disease and certain fixed indemnity coverage). Individuals enrolled in Medicare are not eligible to contribute to an HSA.

There are three ways that HSAs are tax-favored:

- » **Contributions** made to an HSA by eligible individuals are deductible for federal (and most state) income tax purposes (regardless of whether the individual itemizes deductions). Employer contributions (including pretax salary reductions) are excludable from employees' incomes and are not subject to payroll (e.g., FICA) taxes.
- » **Income** on amounts held in an HSA accumulate on a tax-free basis until withdrawn from the account.

- » **Distributions** from an HSA for qualified medical expenses are tax free. Nonqualifying distributions are includible in income and are also subject to an additional 20% tax. The additional 20% tax does not apply to distributions made after the individual account owner reaches age 65, becomes disabled or dies. Thus, if not needed for medical expenses, HSAs may help supplement retirement income.

More information about HSAs and HDHPs, including contribution limits and other rules, may be found [here](#).

Why does the definition of preventive care matter?

An HDHP generally cannot pay any benefits before the covered individual meets their deductible, and the individual is responsible for 100% of covered medical expenses before they reach their deductible. The only exception to this rule is for certain preventive care. A broader definition of preventive care makes an HDHP more attractive to employees and provides an incentive for individuals to seek preventive care if it is covered by their plan.

The IRS previously addressed the scope of preventive services under an HDHP in several different rulings and notices. This prior guidance did not include much detail about permitted preventive care for many common chronic conditions.

Expanding the scope of preventive services

Notice 2019-45 lists 14 specific treatments for certain chronic conditions that are considered “preventive care” for HDHP/HSA purposes.

Preventive care for specified conditions	For individuals diagnosed with
Angiotensin converting enzyme (ACE) inhibitors	Congestive heart failure, diabetes and/or coronary artery disease
Antiresorptive therapy	Osteoporosis and/or osteopenia
Beta blockers	Congestive heart failure and/or coronary artery disease
Blood pressure monitor	Hypertension
Inhaled corticosteroids	Asthma
Insulin and other glucose lowering agents	Diabetes

Preventive care for specified conditions	For individuals diagnosed with
Retinopathy screening	Diabetes
Peak flow meter	Asthma
Glucometer	Diabetes
Hemoglobin A1c testing	Diabetes
International normalized ratio (INR) testing	Liver disease and/or bleeding disorders
Low-density lipoprotein (LDL) testing	Heart disease
Selective serotonin reuptake inhibitors (SSRIs)	Depression
Statins	Heart disease and/or diabetes

Considerations for employers

There are a number of issues for employers to keep in mind as they review their HDHP coverage or consider offering an HSA-compliant HDHP:

- » Any services or items considered as preventive care under prior IRS guidance continue to be treated as preventive care for HDHP/HSA purposes.
- » Notice 2019-45 does not require a plan to cover the listed services or items or restrict whether cost sharing may be imposed with respect to covered services.
 - » Nongrandfathered health plans are required under the Affordable Care Act (ACA) to cover certain preventive services without cost sharing. The list of required preventive services is addressed in other rules and not impacted by Notice 2019-45.
- » Plan sponsors should review their HDHP in light of the new guidance and consult with their own advisers regarding any issues.
- » Remember that employees may have certain limited types of coverage in addition to the HDHP and still qualify for an HSA. HDHPs are intended to make individuals more aware of and involved in their health care decisions by ensuring that the individual has “skin in the game” for medical expenses before the deductible is met. Thus, in general, individuals may not have health coverage in addition to an HDHP and also qualify for an HSA. A limited exception applies, however, for

certain types of permitted insurance and permitted coverage. Under this exception, individuals can have certain types of coverage and still be eligible to contribute to an HSA. Permitted insurance and coverage include:

- » Accident and disability coverage.
- » Insurance coverage for a specified disease (e.g., cancer) or illness (sometimes called “critical illness” coverage).
- » Hospital indemnity insurance coverage that pays a fixed amount per day (or other period) of hospitalization.
- » Dental and vision care.
- » Long-term care.

Conclusion

The new guidance provides some helpful clarification about the scope of preventive services that may be provided under an HDHP for persons with chronic conditions. Employers who offer HDHPs and HSAs (or are considering doing so) should review their plans with the new guidance in mind and consult their advisors about any design changes. As for possible future guidance, the IRS will continue to look at these issues and provide updates (approximately every 5 to 10 years, but hopefully sooner). As there are improvements to medical care and HSAs expand, with more individuals managing chronic illness, the need to appropriately define the scope of permitted preventive care services will remain an on-going issue.

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