

HSA-Telehealth Relief is Back (Temporarily)!

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Today, President Biden signed into law the [Consolidated Appropriations Act, 2022](#) (“CAA 2022”), which, among other things, temporarily renews certain relief to individuals to have access to telehealth coverage and other remote care without adversely affecting their ability to make or receive contributions to their Health Savings Account (“HSA”). Employers will need to pay special attention to the effective dates of this relief to ensure employees contributing to an HSA remain eligible to contribute to an HSA.

To date, there is no IRS guidance specifying how the provision of medical services via telehealth impacts an individual’s ability to contribute to an HSA. However, under the general HSA rules in Internal Revenue Code (“Code”) section 223 and IRS guidance pertaining to on-site clinics, employee assistance plans, wellness programs, and disease management programs, a high deductible health plan (“HDHP”) or standalone coverage is not HSA-compatible if it provides significant benefits in the nature of medical care or treatment before the minimum statutory deductible is satisfied. Applying this rule in the telehealth context, telehealth that provides significant benefits without regard to whether the HDHP’s deductible is satisfied generally would cause an individual who is otherwise eligible to contribute to an HSA to lose that eligibility. Note that this does not apply to telehealth providing preventive care or dental or vision care, as there are special exceptions for these types of specific services under the Code. In addition, under IRS guidance, COVID-19 testing and treatment may be provided without regard to whether an individual has satisfied his/her HDHP deductible, including via telehealth.

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GROOM INSIGHT: As telehealth capabilities evolve and telehealth offerings become more robust, it may be challenging to continue to defend that a given telehealth arrangement does not in fact provide significant benefits in the nature of medical care or

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treatment. In addition, legislation crafted as a “telehealth exception” to the HSA rules further erodes the ability to argue that telehealth services may be provided to HSA-eligible individuals without impacting eligibility to contribute to an HSA if that exception expires or is otherwise unavailable (since Congress would presumably not have felt compelled to provide legislative relief to the extent it is otherwise permitted). However, because each telehealth offering is unique, in the absence of specific IRS guidance, it is important to evaluate this threshold question before concluding that the provision of services via telehealth is problematic from an HSA perspective.

Under the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) and Notice 2020-29, an HDHP can temporarily cover telehealth and “other remote care services” pre-deductible, and an individual can have stand-alone coverage for telehealth and other remote care services pre-deductible without impacting his/her ability to contribute to an HSA. This relief, however, only applies to telehealth and other remote care services provided on or after January 1, 2020, with respect to plan years beginning on or before December 31, 2021. Thus, for calendar year plans, this relief ended on December 31, 2021 and thus was not available for any plan years beginning on or after January 1, 2022.

The CAA 2022 largely renews this relief, but only on a **prospective** and **temporary** basis. Specifically, the new relief applies for “months beginning after March 31, 2022, and before January 1, 2023.”

Impact on Calendar Year HDHPs

For calendar year plans, this means that there is a gap of January, February, and March of 2022 where coverage for telehealth on a pre-deductible basis will generally render an individual ineligible to contribute to an HSA.

Thus, if the individual continued to have access to pre-deductible telehealth during those months, he/she would only be HSA-eligible for 9 months of 2022 (April – December), and the maximum HSA contribution for 2022 is generally limited to \$2,737.50 for self-only HDHP coverage and \$5,475 for family HDHP coverage. The one exception to this is for individuals who qualifying for the special HSA rule under which he/she is treated as HSA-eligible for all of 2022 as long as he/she is HSA-eligible for December 2022 and remains HSA eligible for all of 2023. In that case, the maximum HSA contribution for 2022 is generally \$3,650 for self-only HDHP coverage and \$7,300 for family HDHP coverage.

GROOM INSIGHT: Notably, in order to take advantage of the special HSA contribution rule under which the individual must remain HSA-eligible for the full preceding tax year, it will be imperative that the sponsor of that individual’s group health plan amend the terms of that plan for purposes of the 2023 calendar year to ensure that telehealth is not provided on a pre-deductible basis or otherwise in a manner that would cause the individual to be HSA-ineligible for even one month in 2023. Otherwise, he/she will not be eligible to make the full 12 months of contributions with respect to the 2022 calendar year.

Impact on Non-Calendar Year HDHPs

For non-calendar year plans that began in 2021, the impact will depend on when the plan year began and when it ends/ended. For example, for a plan with a plan year from March 1, 2021 through February 28, 2022, there will be a one-month gap of March 2022 where coverage for telehealth on a pre-deductible basis may render an individual ineligible to contribute to an HSA. In contrast, a plan with a plan year that begins on or after April 1, 2022 will not have any gap in 2022; however, the plan will not be able to provide pre-deductible telehealth for the portion of the 2022 plan year spanning into 2023 (since the relief expires on December 31, 2022).

Action Items

Employers that would like to take advantage of this relief will need to amend their plan to reflect how the deductible applies to telehealth during these different times periods. Employers must also issue an SMM or revised SPD that clearly communicates this information to employees, because the different effective dates will likely to cause confusion to employees.

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