

Treasury Department and IRS Release Guidance on Preventive Care for Chronic Conditions under High Deductible Health Plans

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On July 17, 2019, the Treasury Department and the IRS issued Notice 2019-45 to expand the types of preventive care services and benefits that can be provided to individuals under high deductible health plans (“HDHPs”) before reaching a minimum deductible and without preventing such individuals’ participation in health savings accounts (“HSA”). The additional preventive care services and benefits relate to medical care that helps maintain the health of individuals with chronic conditions.

As background – to be eligible for an HSA, an individual must be covered by a HDHP. Generally, a HDHP cannot provide benefits for any year until the minimum applicable deductible for that year is satisfied. However, there is a statutory safe harbor that permits HDHPs to provide “preventive care” without a minimum deductible. New Notice 2019-45 sets forth a list of 14 medical services and benefits for the treatment of specified chronic conditions (including diabetes, hypertension, and heart disease, among others) that, effective July 17, 2019, can be provided by a HDHP under the preventive-care safe harbor without a minimum deductible.

The list of covered services and benefits, which is included below as an appendix, expands the scope of the preventive-care safe harbor and represents a departure by the Treasury Department and the IRS from their previously stated view that preventive care does not generally include any service or benefit intended to treat an existing illness, injury, or condition. According to the Treasury Department and the IRS, the services and benefits listed in Notice 2019-45 should be classified as preventive care when prescribed for a person with the relevant chronic condition because “failure to address these chronic conditions has been demonstrated to lead to consequences, such as amputation, blindness, heart attacks, and strokes that require considerably more extensive medical intervention.”

The 14 services and benefits listed in Notice 2019-45 only qualify for the preventive-care safe harbor when prescribed to a person diagnosed with the chronic condition, to prevent its exacerbation or to prevent the development of a secondary condition. Services and benefits that are not listed in Notice 2019-45 will not qualify for the preventive-care safe harbor even when prescribed under the foregoing circumstances. In addition, services and benefits not listed in Notice 2019-45 that are prescribed for secondary conditions or complications that occur notwithstanding the preventive care do not qualify for the safe harbor. The Treasury Department and the IRS intend to review the list

every five to ten years in consultation with the Department of Health and Human Services, to determine whether any services or benefits should be added or removed.

If you sponsor a HDHP and would like to discuss amending the plan to provide one or more of the services and benefits listed in Notice 2019-45 without a deductible (or with a deductible below the applicable minimum deductible), please contact a member of our Employee Benefits group.

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Appendix

Preventive Care for Specified Conditions

Angiotensin Converting Enzyme (ACE) inhibitors
Anti-resorptive therapy
Beta-blockers
Blood pressure monitor
Inhaled corticosteroids
Insulin and other glucose lowering agents
Retinopathy screening
Peak flow meter
Glucometer
Hemoglobin A1C testing
International Normalized Ratio (INR) testing
Low-density Lipoprotein (LDL) testing
Selective Serotonin Reuptake Inhibitors (SSRIs)
Statins

For Individuals Diagnosed with

Congestive heart failure, diabetes, and/or coronary artery disease
Osteoporosis and/or osteopenia
Congestive heart failure and/or coronary artery disease
Hypertension
Asthma
Diabetes
Diabetes
Asthma
Diabetes
Diabetes
Liver disease and/or bleeding disorders
Heart disease
Depression
Heart disease and/or diabetes