COMPLIANCE OVERVIEW

Telemedicine – Impact on HSA Eligibility

Telemedicine is becoming a popular method of providing a variety of medical services. Some employers offer a telemedicine benefit that allows employees to interact with health care professionals via phone, video chat, email or text for diagnosis, consultation and treatment. Employers that offer high deductible health plans (HDHPs) that are compatible with health savings accounts (HSAs) should consider how a telemedicine benefit may impact participants' HSA eligibility.

The Internal Revenue Service (IRS) has not specifically addressed the impact of telemedicine on HSA eligibility. However, the general rules for HSA contributions strictly limit the types of health plan coverage that eligible individuals may have. Whether telemedicine is disqualifying coverage for HSA purposes depends on how the telemedicine benefit is structured. Employers that want to offer a telemedicine benefit while preserving HSA eligibility will need to make sure that the telemedicine benefit is designed in a way that is HSA–compatible.

UPDATE: The Coronavirus Aid, Relief and Economic Security Act (CARES Act) **allows HDHPs to cover telehealth and other remote care services before the plan's deductible is met**, without affecting the HDHP's compatibility with HSAs. This rule is effective Jan. 1, 2020, and applies for plan years beginning on or before Dec. 31, 2021.

LINKS AND RESOURCES

- IRS Notice 2004-50
- IRS Publication 969, Health Savings Accounts and Other Tax-favored Health Plans

HSA Eligibility Rules

To be HSA-eligible, an individual must:

- Be covered by an HDHP;
- Not be covered by other health plan coverage that is not an HDHP (with certain exceptions);
- Not be enrolled in Medicare; and
- Not be eligible to be claimed as a dependent on another person's tax return.

Disqualifying Coverage

- As a general rule, telemedicine programs that provide free or reduced-cost medical benefits before the HDHP deductible is satisfied are disqualifying coverage.
- The CARES Act changes these rules for plan years beginning before Jan. 1, 2022.
- Effective March 27, 2020, the CARES Act allows HDHPs to cover telehealth services without a deductible.

Telemedicine Benefits

Telemedicine is a way for health care professionals to provide patient care through technology (such as a web-based communication or phone/video chat) rather than in-person consultations. For example, through telemedicine, a patient may be able to communicate in real-time with his or her doctor from home via phone, video chat, email or text for the purpose of medical evaluation, diagnosis and treatment.

While telemedicine is not a new type of employee benefit, it is growing in popularity with employers and employees. Telemedicine can provide easier access to health care services for employees who live in rural areas and employees who travel frequently for work. By accessing health care professionals through telemedicine, employees can avoid having to take time off from work for in-person office visits. Also, because telemedicine consultations are generally less expensive than in-person visits, incorporating a telemedicine benefit may help control health coverage costs. In some states, health insurance policies are required to cover at least some telemedicine services.

Before implementing a telemedicine benefit, employers should consider the compliance issues associated with this type of benefit. Employers that sponsor HDHPs will also want to consider whether the telemedicine coverage could disqualify employees from making HSA contributions.

Current Status of Rules Due to CARES Act:

Effective Jan. 1, 2020, the CARES Act **allows HDHPs to provide benefits for telehealth or other remote care services before plan deductibles have been met**. This rule is applicable for plan years beginning before Jan. 1, 2022. This means that HDHPs can provide coverage for telehealth services before the required minimum deductible has been reached without jeopardizing plan participants' eligibility for HSA contributions. It also means that an otherwise eligible individual with coverage under an HDHP may also receive coverage for telehealth and other remote care services outside the HDHP and before satisfying the deductible of the HDHP and still contribute to an HSA. This Compliance Overview discusses the rules that were in place before Jan. 1, 2020, and that will apply again for plan years beginning on or after Jan. 1, 2022 (unless the CARES Act's provision for telehealth services is extended).

HSA Eligibility

An HSA is a tax-favored trust or account that can be contributed to by, or on behalf of, an eligible individual for the purpose of paying qualified medical expenses. HSAs provide a triple tax advantage. Contributions, investment earnings and amounts distributed for qualified medical expenses are all exempt from federal income tax, FICA tax and most state income taxes. Due to an HSA's potential tax savings, federal tax law imposes strict eligibility requirements for HSA contributions.

Only an eligible individual can establish an HSA and make HSA contributions (or have them made on his or her behalf). An individual's eligibility for HSA contributions is generally determined monthly as of the first day of the month. The HSA contribution limit is calculated each month, and a contribution can only be made for months in which the individual meets all of the HSA eligibility requirements. To be HSA-eligible for a month, an individual must:

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HSA Eligibility Requirements	
1	Be covered by an HDHP on the first day of the month;
2	Not be covered by any health plan that provides coverage below the minimum required HDHP deductible (with certain exceptions);
3	Not be enrolled in Medicare; and
4	Not be eligible to be claimed as a dependent on another person's tax return.

Employer Verification

When an employer makes a tax-free contribution to an employee's HSA, the employer should have a reasonable belief that the contribution will be excluded from the employee's income. However, the employee, and not the employer, is primarily responsible for determining eligibility for HSA contributions. IRS Notice 2004-50 (Q&A-81) states that an employer is only responsible for determining whether the employee is covered under an HDHP or any low deductible health plan sponsored by the employer, including health flexible spending accounts (FSAs) and health reimbursement arrangements (HRAs).

If the employer does not have a reasonable belief that the contribution will be excluded from the employees' income (for example, because the employee is covered under a non-HDHP sponsored by the employer), then the contribution is subject to federal income and employment tax withholding.

HSA-Compatible Coverage

To be eligible for HSA contributions, an individual generally cannot have health coverage other than HDHP coverage. This means that an HSA-eligible individual cannot be covered under a health plan that provides coverage below the HDHP minimum annual deductible. Certain types of non-HDHP coverage, however, will not prevent an individual from being HSA-eligible. These types of coverage include the following:

Type of Coverage	Description
Preventive Care	Includes periodic health examinations, routine prenatal and well-child care, child and adult immunizations, tobacco cessation programs, obesity weight loss programs and certain health screenings. In general, it does not include any service or benefit intended to treat an existing illness, injury or condition.
Permitted Insurance	Insurance benefits for workers' compensation, tort liabilities, property liabilities, specific diseases or illnesses, or a fixed amount per day (or other period) for hospitalization (that is, hospital indemnity insurance).
Permitted Coverage	Separate coverage for accidents, disability, dental care, vision care or long-term care.

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Type of Coverage	Description
"Insignificant" Medical Benefits	An employee assistance program (EAP), disease management program or wellness program if the program does not provide significant benefits in the nature of medical care or treatment. To determine whether a program provides significant benefits in the nature of medical care or treatment, preventive care services are disregarded.
Discount Programs	Discount cards that entitle holders to obtain discounts for health care services or products at managed care market rates if the individual is required to pay the costs of the health care (taking into account the discount) until the deductible of the HDHP is satisfied.

Application to Telemedicine – Rules Applicable Before Jan. 1, 2020

The IRS has not addressed how telemedicine benefits impact individuals' eligibility for HSA contributions. Due to the growing popularity of telemedicine and HSAs, more guidance from the IRS on this topic would be helpful. Under the IRS' general rules for HSA eligibility, a telemedicine program may not prevent an individual from contributing to an HSA if the program satisfies one of the design options described below.

- ☑ The telemedicine program is offered as part of the HDHP and the program's benefits are subject to the HDHP deductible (with the exception of preventive care benefits). This means that participants would be required to pay the fair market value of the services (or managed care rates for discounted health services, if applicable) until the HDHP deductible is satisfied. Once their HDHP deductibles have been satisfied, employees can have access to free or low-cost medical benefits without jeopardizing their HSA eligibility.
- ☑ The telemedicine program is not considered a "health plan" under the HSA eligibility rules because it does not provide significant benefits for medical care or treatment. Unfortunately, the IRS has not provided specific rules for determining when medical benefits are significant. The IRS has indicated, however, that the amount, scope and duration of covered services should be taken into account. Because telemedicine benefits are often similar to the services covered under the HDHP, it may be difficult for most programs to satisfy this exception.
- ☑ Benefits under the telemedicine program are limited to preventive care services. Because most HDHPs are required to cover preventive care benefits without cost sharing, this design option may not be attractive for many employers. The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for employee benefit plans maintained by private-sector employers. ERISA includes requirements for both retirement plans (for example, 401(k) plans) and welfare benefit plans (for example, group health plans).

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