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IRS Expands Definition of Preventive Care for Qualified High Deductible Health Plans

In June, the Trump Administration issued [Executive Order 13877](#) requiring various federal agencies to develop rules designed to assist patients in making informed decisions about their healthcare. A summary of this Executive Order can be found in our [earlier Alert](#).

In the Order, the IRS was directed to issue guidance permitting qualified high deductible health plans (HDHPs) to cover medical care for chronic conditions as preventive care. This means the HDHP will be able to provide these benefits before the individual has met the applicable minimum annual statutory deductible without affecting a participant's ability to make or receive health savings account contributions. The IRS issued this guidance as [IRS Notice 2019-45](#) on July 17, 2019.

The Bottom Line

- 1) **Expansion for Chronic Conditions** – The existing definition for services that can be covered as preventive care under an HDHP has been expanded to include medical services and prescription drugs for certain chronic conditions.
- 2) **It's a Choice** – HDHPs are not required to cover these services as preventive care but may choose to do so. We expect many HDHPs will be amended to adopt this expansion.

However

- 3) **Limited Services** – The medical services and prescription drugs for certain chronic conditions that can be covered as preventive care are limited to a narrow list.
- 4) **For Certain Chronic Condition(s)** – An individual must be diagnosed with the corresponding chronic condition, and the services must be prescribed to prevent the condition from worsening or to prevent the individual from developing another condition.

Note: Please see *HDHP Preventive Care Safe Harbor* below for more detail about eligible preventive care under an HDHP.

When?

IRS Notice 2019-45 is effective as of **July 17, 2019**, and HDHPs may take advantage of it immediately. It may be more practical for an HDHP to wait until the beginning of its next plan year to adopt the plan design change rather than adopting it mid-year.

HDHP Preventive Care Safe Harbor

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The Existing Rule

IRS guidance describes categories of services that may be covered as preventive care provided that the services or treatments are not for the treatment of an existing illness, injury, or condition.¹ The IRS has indicated the described categories are not intended to be exhaustive.

Existing Preventive Care Safe Harbor List (non-exhaustive)

Annual physicals, including necessary testing and diagnostic procedures	Routine prenatal care
Adult immunizations	Routine well-child care
Child immunizations	Obesity weight-loss programs
Cancer screening	Tobacco cessation programs
Infectious diseases screening	Heart and vascular diseases screening
Mental health conditions screening	Substance abuse screening
Metabolic, nutritional, and endocrine conditions screening	Osteoporosis screening
Obstetric and gynecologic conditions screening	Pediatric conditions screening
Vision disorders screening	Hearing disorders screening
Preventive services mandated by the Affordable Care Act (ACA)	

As Expanded by IRS Notice 2019-45

The following services may now also be covered as preventive care. This list is exhaustive.

Services for Specified Conditions	For Individuals Diagnosed with
Angiotensin Converting Enzyme (ACE) inhibitors	Congestive heart failure, diabetes, and/or coronary artery disease
Anti-resorptive 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
Retinopathy screening	Diabetes
Peak flow meter	Asthma
Glucometer	Diabetes
Hemoglobin A1c testing	Diabetes
International Normalized Ration (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

Don't Get Carried Away

¹ This guidance appears in several locations including Internal Revenue Code Section 223(c)(2)(C), IRS Notice 2004-23, IRS Notice 2004-50, Q/A #26 and 27, and IRS Notice 2013-57.

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[IRS Notice 2013-57](#) added the ACA preventive services to the definition of preventive care for HDHPs in 2013. IRS Notice 2019-45 does not affect the required [preventive services](#) that non-grandfathered medical plans must cover under the Affordable Care Act (ACA).

The IRS earlier indicated in [IRS Notice 2018-12](#) that male contraceptive services could not be covered as preventive care under an HDHP even when mandated by state law.² IRS Notice 2019-45 does not change this earlier guidance.



ABOUT THE AUTHORS

Allie Waits is a Compliance Consultant for Marsh & McLennan Agency's Upper Midwest Region.



Jennifer Stanley is a Compliance Consultant in the Employee Health & Benefits Compliance Center of Excellence for Marsh & McLennan Agency.

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² IRS Notice 2018-12 provides for transition relief until January 1, 2020.