JULY 2022

Aflac | Federal Relations Advisory

Stay up to date on requirements for Health Savings Accounts and High Deductible Health Plans

Alston & Bird LLP and Aflac

Coupling health savings accounts (HSAs) with high deductible health plans (HDHPs) is a popular way to provide employer-sponsored health care. HSAs give employees the ability to save and pay for health expenses not covered by health insurance on a tax-free basis. These tax-free contributions may be made by both employers and eligible individuals through pre-tax salary reduction.

Pre-tax salary reduction contributions are exempt from both the employer and employee portions of payroll taxes, depending on the contributor. This includes Social Security and Medicare taxes. Amounts withdrawn from an HSA for qualifying medical expenses are also free from tax.

Recent changes to HSAs and HDHPs:

- Annual cost-of-living adjustments.
- Expansion of benefits covered before the deductible is met.

Withdrawals for non-medical expenses can be made at any time but are taxable and subject to an additional 20% tax unless the withdrawal is made after age 65, disability or death.

HSA requirements

An individual must meet both of the following requirements to be HSA-eligible:

- Covered under an HDHP.
- Not covered under any other health plan, other than certain limited types of coverage, called “permitted coverage.” Permitted coverage includes:
  - Accident and disability coverage.
  - Insurance coverage for a specified disease (e.g., cancer) or a specified illness.
  - Hospital indemnity insurance coverage that pays a fixed amount per day (or other period) of hospitalization.
  - Dental and vision care.
  - Long-term care.

HDHP requirements

HDHPs must meet three core requirements:

- Cannot pay benefits before the deductible is met, with exceptions for preventive care and certain other limited benefits. The individual is responsible for 100% of covered medical expenses before reaching the plan's deductible.
- Must have a minimum annual deductible.
- Must meet limits on out-of-pocket (OOP) expenses.
  - HDHPs are subject to two OOP limits: One is specific to HDHPs and the other applies to most health plans under the Affordable Care Act (ACA). Under the ACA, the individual OOP max must be applied separately to each individual under a family plan. HDHPs must comply with the lower of the two limits.
  - **Example:** In 2022, a family health plan has an OOP limit of $14,000. This plan satisfies the OOP max for an HDHP. However, in order to satisfy the ACA rules, the plan must also have a separate OOP limit for each individual of no more than $8,750.

HDHP limits	2022	2023
Minimum annual deductible	Self-only: $1,400 Family: $2,800	Self-only: $1,500 Family: $3,000
HDHP maximum out-of-pocket limit	Self-only: $7,050 Family: $14,100	Self-only: $7,500 Family: $15,000
ACA maximum out-of-pocket limit	Self-only: $8,700 Family: $17,400	Self-only: $9,100 Family: $18,200

HSA contribution limits

Both employers and employees may contribute to an HSA. Employer and employee contributions made through pre-tax salary reduction are not subject to tax. Contributions are subject to overall dollar limits on the total of employer and employee contributions.

HSA contribution limits	2022	2023
Contribution limit	Self-only: $3,650 Family: $7,300	Self-only: $3,850 Family: $7,750
Catch-up contributions for individuals age 55 and up (this limit is not indexed for inflation)	$1,000	$1,000

HDHP benefits that may be covered before meeting the deductible

A key requirement of HDHPs is that an individual must pay 100% of covered medical expenses before the deductible is met. Limited exceptions to this rule include certain preventive care services and some specified non-preventive care services. Over time, the scope of preventive care services has expanded.

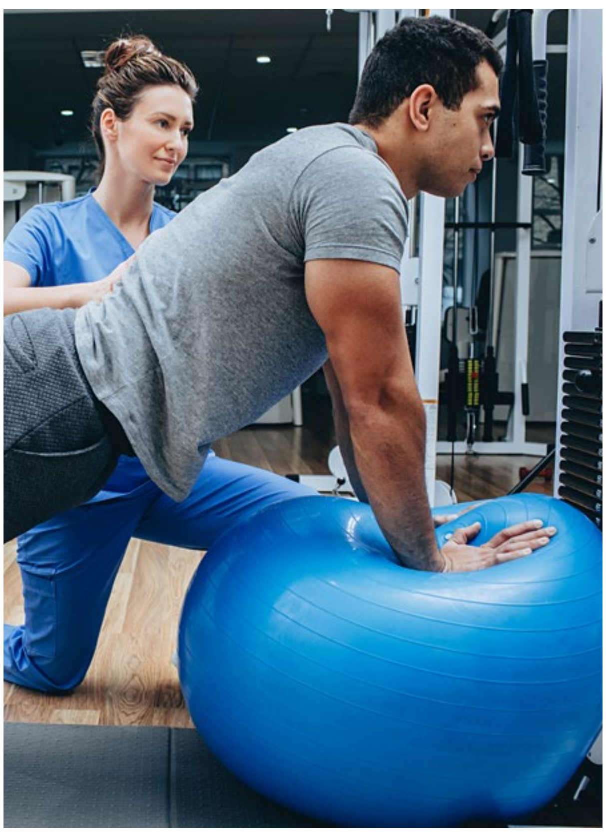
Telehealth services (temporary)

The Coronavirus Aid, Relief, and Economic Security (CARES) Act allows HDHPs to cover telehealth and other remote care services before meeting the deductible and without jeopardizing HSA eligibility. The provision applied to plan years beginning before Jan. 1, 2022, but Congress extended the provision for coverage months beginning after March 31, 2022, and ending before January 1, 2023.

- While the extension was welcome news, the effective date created an issue for calendar year plans that provided telehealth below the deductible between January and March of 2022. Plans with a plan year starting in April or later were not impacted by this gap in the effective date.
- Unless extended by Congress, the telehealth exception expires for all plans for coverage months ending on or after December 31, 2022.

COVID testing and treatment

IRS Notice 2020-15 provides that COVID-19 testing and treatment can be covered before the deductible is met. It is important to note that this exception is not tied to the COVID-19 public health or national emergency, so it remains in effect until the IRS issues guidance that terminates or modifies the exception.



Preventive and chronic care:

- The IRS issued safe harbors for the definition of preventive care related to HDHPs in Notice 2004-23 and followed up with additional guidance in Notice 2004-50, which addressed preventive care, treatment of related conditions, and certain drugs or medications that may be considered preventive care.
- Since the passage of the ACA, the scope of preventive services includes all ACA-required preventive care.
- Most recently, IRS Notice 2019-45 expands the scope of preventive care to include certain medical items, services and prescription drugs for chronic conditions. The notice includes a list of items and services that qualify as preventive care based on the specific diagnosis of an individual, such as statins for heart disease and/or diabetes. The IRS has indicated that the list is exhaustive, even though other items or services might meet the standards the IRS used in developing the list. While the expansion is helpful, it also creates some compliance issues for employers and plan administrators that may extend coverage below the deductible beyond the listed services. Further detail on Notice 2019-45 is in this Aflac Advisory.

Treatment of drug coupons and manufacturer rebates

The IRS position is that only the amount an individual actually pays for a drug may be counted toward the HDHP deductible. For example, if the price of a covered drug is $800 and an individual has a coupon for $300, thus reducing the amount the individual has to pay to $500, only the $500 should be counted toward the HDHP deductible. Some state laws may be contrary to the IRS position and require counting the full amount; employers should consult with their advisers on these complicated issues.

Conclusion

HDHPs coupled with an HSA may be an attractive choice for many employers and employees. This article has provided a high-level summary of key requirements for HDHPs, focusing on more recent developments. Employers and individuals should consult with their own advisers as to the compliance details and what options may work best for them.

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