



HEALTH CARE REFORM: NEW GUIDANCE FOR PREVENTIVE CARE BENEFITS UNDER A HIGH DEDUCTIBLE HEALTH PLAN

Contributions to a Health Savings Account are contingent upon an individual's participation in a high deductible health plan (HDHP). In order to retain the status of being an HDHP, such plans may not pay benefits unless and until the minimum deductible amount has been satisfied. In 2019, the minimum deductible amount is \$1,350 for self-only coverage and \$2,700 for family coverage.

An HDHP may provide preventive care benefits without a deductible or with a deductible less than the minimum annual deductible amount (the "safe harbor") subject to the requirements of the Affordable Care Act.

¹ Generally speaking, "preventive care" that is not subject to the deductible limits includes but is not limited to:

- Periodic health evaluations, including tests and diagnostic procedures ordered in connection with routine examinations, such as annual physicals;
- Routine prenatal and well-child care;
- Tobacco cessation programs;
- Obesity weight-loss programs; and
- Screening services (including screening for cancer, heart and vascular diseases, mental health conditions, substance use disorder, metabolic/nutritional/endocrine conditions, musculoskeletal disorders, obstetric and gynecological conditions, pediatric conditions and vision and hearing disorders).

Notably, until recently, there was no preventive care safe harbor for services or benefits intended to treat an existing illness, injury, or condition. For detailed information regarding the preventive care safe harbor, please review IRS Notice 2004-23 at: <https://www.irs.gov/pub/irs-drop/n-04-23.pdf>. IRS Notice 2004-50 (Q 26 and Q 27) provides further insights into the preventive care safe harbor (<https://www.irs.gov/pub/irs-drop/n-04-50.pdf>).

Effective July 17, 2019, the Treasury Department and Internal Revenue Service, in consultation with the Department of Health and Human Services, issued Notice 2019-45 (the "Notice") that provides new guidance on the preventive care safe harbor for chronic conditions.

The Notice allows certain medical care services and items purchased (including prescription drugs) for certain chronic conditions to be characterized as preventive care for purposes of the preventive care safe harbor (i.e. not required to be subject to the minimum deductible amount).

¹ All non-grandfathered plans, whether or not an HDHP, must provide preventive care services without a deductible as described in the Affordable Care Act. For a list of those services, please visit: <https://www.healthcare.gov/coverage/preventive-care-benefits/>



The Notice is specific about what items/services come within the definition of “preventive care” and requires the items/services be prescribed and of low cost. Moreover, there must be medical evidence supporting high cost efficiency (a large expected impact) of preventing exacerbation of the chronic condition or the development of a secondary condition and a strong likelihood, documented by clinical evidence, that with respect to the class of individuals prescribed the item or service, the specific service or use of the item will prevent the exacerbation of the chronic condition or the development of a secondary condition that requires significantly higher cost treatments.

The new items and services for chronic conditions are listed below. These are the only items/services that are being added to the definition of “preventive care” even though other items/services may satisfy the requirements described above.

Preventive Care of 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 Ratio (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

Plan Sponsors who wish to provide these services outside of the deductible limits of their HDHP should amend their plans accordingly and should ensure coordination with the Affordable Care Act preventive services mandate.

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