



AMERICAN BENEFITS  
COUNCIL

March 10, 2020

*Submitted via electronic mail*

Carol Weiser  
Benefits Tax Counsel  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Victoria Judson  
Associate Chief Counsel (EEE)  
Internal Revenue Service  
Office of Chief Counsel  
1111 Constitution Avenue, NW  
Washington, DC 20224

**Re: Request for Confirmation Regarding Coverage of Screening for COVID-19 in High Deductible Health Plans**

Dear Ms. Weiser and Ms. Judson,

I write on behalf of the American Benefits Council (“the Council”) to highlight actions many employers are taking to ensure that employees and their families are being screened for novel coronavirus 2019 (COVID-19). More specifically, the Council requests confirmation that high deductible health plans (HDHPs) may cover the entire cost of COVID-19 screening, even if covered employees and their family members have not yet met their annual deductible.

The Council is a Washington D.C.-based employee benefits public policy organization. The Council advocates for employers dedicated to the achievement of best-in-class solutions that protect and encourage the health and financial well-being of their workers, retirees and families. Council members include over 220 of the world's largest corporations and collectively either directly sponsor or administer health and retirement benefits for virtually all Americans covered by employer-sponsored plans.

Employers are grappling with the COVID-19 outbreak and its impacts on workers and their families. Moreover, employers, which provide health coverage to over 178 million Americans, play a critical role in the health care system and, as such, will play a critical role in addressing the COVID-19 epidemic. As employers work to contribute to the efforts to address the epidemic, and as the ability to screen for COVID-19 expands,

many employers intend to provide COVID-19 screening through employer-provided health plans on a pre-deductible basis, and without cost sharing. This is to ensure that employees and their families seek screening when appropriate as one step to limit the spread of the outbreak. Further, some states have issued directives, or are considering doing so, to require insured plans to cover COVID-19 testing without cost sharing including emergency room visits, in-network urgent care and office visits.

At the same time, many employers offer HDHPs to their employees, which allow covered individuals to contribute to health savings accounts (HSAs) and receive contributions from an employer to their HSA. As you know, in order for a plan to qualify as an HDHP, it must satisfy certain requirements, including that it must have a minimum deductible and may not provide benefits for any year until the minimum deductible for that year is satisfied. However, Internal Revenue Code section 223(c)(2)(C) provides a safe harbor for the absence of a deductible for preventive care. This means that an HDHP may provide preventive care benefits either without a deductible or with one that is below the otherwise required minimum annual level.

Over the years, the Treasury Department and the Internal Revenue Service (IRS) have provided guidance as to which benefits qualify as preventive care. In particular, IRS Notice 2004-23 provides a safe harbor for preventive care benefits, including screening services, such as screening for certain infectious diseases and cancer.

While many employers view existing guidance as allowing pre-deductible coverage of COVID-19 screening (including when symptoms are present), other employers have raised questions as to whether a plan that provides screening for COVID-19 without cost sharing, if the individual has not yet met his/her deductible, qualifies as an HSA-compatible HDHP. This uncertainty among some employers has the potential to undermine employers' ability to provide COVID-19 screening at no cost to employees and their family members and could cause conflicts with state laws intended to mitigate the epidemic. Accordingly, we urge the Treasury Department and IRS to confirm that a plan will retain its status as an HSA-compatible HDHP if it covers screening for COVID-19 (including the test itself, the administration of the test and the related office visit), at no cost to the employee or a reduced cost to the employee, before the deductible is satisfied.

Such guidance would be consistent with prior guidance which provides that certain screenings constitute preventive care. This is the case regardless of whether the individual seeking the screening has symptoms consistent with COVID-19. For the sake of certainty and clarity, which are essential to employers and employees, we request that the Treasury Department and the IRS confirm that COVID-19 screening constitutes preventive care without requiring a person-by-person fact-specific inquiry as to whether the individual has certain symptoms. Due to the urgency of this request and the many priorities of the Treasury Department and IRS, we ask that any responding guidance address the specific issue at hand, rather than the preventive care safe harbor under the HDHP rules, and their application to screening, more generally.

Confirmation through clear guidance that COVID-19 screening constitutes preventive care, regardless of the presentation of symptoms, will support employers' ability to provide COVID-19 screening without cost sharing, will address potential conflicts with new state laws and will remove a distracting issue so that employers can spend time and resources to address other workforce issues regarding the impact of COVID-19. The requested guidance will also avoid confusion to, and administrative burden on, employees who might otherwise be concerned, or unsure, as to whether they made impermissible HSA contributions. This includes contributions for the many employees who are in the middle of their health plan plan year and who specifically selected the plan because it qualified as an HSA-compatible HDHP and allowed them, and their employer, to make HSA contributions.

We commend you for your efforts to address the COVID-19 epidemic and understand the immense amount of work ahead. We greatly appreciate your attention to this matter, among the many other essential matters before you. We stand ready to work with you to assist however we are able, including identifying issues employers face in making their best efforts to protect workers, their families and the public from COVID-19.

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Thank you for your consideration. Please reach out to us on this, or any other matter related to the ability of employers to help address the COVID-19 epidemic. We will continue to notify you of related areas where guidance is needed as we become aware. If you have any questions or would like to discuss further, please contact us at (202) 289-6700.

Sincerely,



Katy Johnson  
Senior Counsel, Health Policy