

## Section 223 – Health Savings Accounts

Preventive health services required under Public Health Service Act section 2713 and preventive care for purposes of Health Savings Accounts

Notice 2013-57

### **PURPOSE**

This notice clarifies that a health plan will not fail to qualify as a high deductible health plan (HDHP) under section 223(c)(2) of the Internal Revenue Code (Code) merely because it provides without a deductible the preventive health services required under section 2713 of the Public Health Service Act (PHS Act) to be provided by a group health plan or a health insurance issuer offering group or individual health insurance coverage.

### **BACKGROUND**

Section 223 of the Code permits eligible individuals to establish Health Savings Accounts (HSAs). Among the requirements for an individual to qualify as an eligible individual under section 223(c)(1) (and thus to be eligible to make, or for the individual's employer to make on their behalf, tax-favored contributions to a HSA) is that the individual be covered under a HDHP and have no disqualifying health coverage. A HDHP is a health plan that satisfies certain requirements with respect to minimum deductibles and maximum out-of-pocket expenses.

Generally, under section 223(c)(2)(A), a HDHP may not provide benefits for any year until the minimum deductible for that year is satisfied. However, section 223(c)(2)(C) provides a safe harbor for the absence of a deductible for preventive care. Section 223(c)(2)(C) states that “[a] plan shall not fail to be treated as a high deductible health plan by reason of failing to have a deductible for preventive care (within the meaning of section 1871 of the Social Security Act, except as otherwise provided by the Secretary).” A HDHP may therefore provide preventive care benefits without a deductible or, subject to any applicable constraints under section 2713 of the PHS Act, with a deductible below the minimum annual deductible otherwise required by section 223(c)(2)(A).

Notice 2004-23 (2004-15 I.R.B. 725), and Q&As 26 and 27 of Notice 2004-50 (2005-33 I.R.B. 196) provide guidance on preventive care benefits allowed to be provided by a HDHP without satisfying the minimum deductible requirement of section 223(c)(2)(A).

Section 1001 of the Affordable Care Act added section 2713 to the PHS Act, requiring group health plans and health insurance issuers offering group and individual health insurance coverage to provide benefits for certain preventive health services

without imposing cost-sharing requirements. (42 U.S.C. 300gg-13). The Affordable Care Act also added section 715(a)(1) to the Employee Retirement Income Security Act of 1974 (ERISA) and section 9815(a)(1) to the Code to incorporate the provisions of part A of title XXVII of the PHS Act, including section 2713, into ERISA and the Code. Guidance under section 2713 of the PHS Act is published jointly by the Treasury Department and IRS and the Departments of Labor and Health and Human Services.

Temporary regulations issued by the Treasury Department and IRS implementing the requirements of section 2713 of the PHS Act under §54.9815-2713T (and parallel regulations issued by the Departments of Labor and HHS) were published in the Federal Register on July 19, 2010 (75 FR 41726), later supplemented by regulations published in the Federal Register on August 3, 2011 (76 FR 46621), February 15, 2012 (77 FR 8725), March 21, 2012 (77 FR 16501) and February 6, 2013 (78 FR 8456). See also Q&A-8 of FAQ Part II (October 8, 2010) and Q&A-1 of FAQ Part V (December 22, 2010), both available at <http://www.dol.gov/ebsa/healthreform/>.

## **GUIDANCE**

Under this notice, preventive care for purposes of section 223(c)(2)(C) of the Code is anything that is preventive care under Notice 2004-23 and Notice 2004-50 without regard to whether it would constitute preventive care for purposes of section 2713 of the PHS Act. Preventive care for purposes of section 223(c)(2)(C) also includes services required to be provided as preventive health services by a group health plan or a health insurance issuer offering group or individual health insurance coverage under section 2713 of the PHS Act and regulations and other administrative guidance issued thereunder. Accordingly, a health plan will not fail to qualify as an HDHP under section 223(c)(2) of the Code merely because it provides without a deductible the preventive care health services required under section 2713 of the PHS Act to be provided by a group health plan or a health insurance issuer offering group or individual health insurance coverage.

## **EFFECT ON OTHER DOCUMENTS**

This notice generally provides that any goods or services that constitute preventive care under the guidance in Notice 2004-23 and Notice 2004-50 will continue to be treated as preventive care for purposes of section 223 and clarifies that any preventive services under section 2713 of the PHS Act will also be treated as preventive care under section 223.

## **DRAFTING INFORMATION**

The principal author of this notice is Karen Levin of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Governmental Entities), though other Treasury Department and IRS officials participated in its development. For further information on the provisions of this notice, contact Karen Levin at (202) 927-9639 (not a toll-free number.)