



# AMERICAN BENEFITS COUNCIL

March 20, 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 Guidance Allowing Pre-Deductible Coverage of Telehealth Services in High Deductible Health Plans to Contain the Spread of COVID-19**

Dear Ms. Weiser and Ms. Judson,

First off, I write on behalf of the American Benefits Council (“Council”) to express our sincere appreciation for the recently-issued guidance (Notice 2020-15), which we had requested, providing that high deductible health plans (HDHPs) coupled with Health Savings Accounts may provide pre-deductible coverage for testing and treatment for novel coronavirus (COVID-19). The clarity provided by the guidance, and the speed with which the Treasury Department and Internal Revenue Service (IRS) issued the guidance, was extraordinarily helpful to employers, who continue to make extensive efforts to ensure that their employees and employees’ families are safe and healthy during this pandemic.

Due to the unprecedented public health emergency posed by COVID-19 and the need to contain the epidemic, I also write to urge the Treasury Department and the IRS to allow HDHPs to cover telehealth visits pre-deductible (or at a lower deductible), without regard to whether the visit directly relates to COVID-19. Although the visit itself may not relate to COVID-19, the ability of employees and their families to abide by social distancing and other containment efforts could significantly contribute to containment of the epidemic. Further, it would allow employees and their families to avoid medical facilities if at all possible, which is essential for the public health.

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, are playing a critical role in addressing and containing the COVID-19 epidemic. Many of our employer members have indicated that offering telehealth benefits in employer-sponsored health plans, without cost-sharing, is a key element to employers' response to the COVID-19 pandemic. Over the last few weeks and days, access to telehealth has become increasingly vital to the health and safety of employees and their families, as public health officials and medical experts have urged individuals to socially distance, to minimize non-urgent interactions with the health care system, and in some cases to shelter in place.

In response to requests from the Council and other stakeholders, on March 11, 2020, the Treasury Department and the IRS issued Notice 2020-15, which provided that “[d]ue to the unprecedented public health emergency posed by COVID-19, and the need to eliminate potential administrative and financial barriers to testing for and treatment of COVID-19, a health plan that otherwise satisfies the requirements to be an HDHP under section 223(c)(2)(A) will not fail to be an HDHP merely because the health plan provides medical care services and items purchased related to testing for and treatment of COVID-19 prior to the satisfaction of the applicable minimum deductible.” While employers are extremely grateful for this guidance, the general understanding is that although Notice 2020-15 would allow pre-deductible coverage of COVID-19 testing and treatment via telehealth, it does not appear to extend to telehealth visits not related directly to COVID-19.

Accordingly, due to the unprecedented public health emergency posed by COVID-19 and the need to contain the epidemic, we urge the Treasury Department and the IRS to allow HDHPs to cover telehealth visits pre-deductible (or at a lower deductible), without regard to whether the visit directly relates to COVID-19. As with Notice 2020-15, we would expect this guidance would be in place until further guidance is issued, following the end of the public health emergency.

We emphasize that the requested guidance is vital to a significant number of individuals, across all incomes. Based on a report released today, as of January 1, 2019, 31.2 million people were enrolled in HDHPs.<sup>1</sup> A separate significant data set shows that in 2018, 63 percent of HSA account holders were in zip codes with median household incomes below \$75,000 per year, with 24 percent of those in zip codes with median household incomes below \$50,000 per year.<sup>2</sup> As such, increased no-cost access to telemedicine in HDHPs during this pandemic could significantly assist containment efforts, for all Americans.

---

<sup>1</sup> Source: AHIP, State of the Market Report on Consumer-Directed Health Plans, March 2020.

<sup>2</sup> Source: Employee Benefit Research Institute, HSA Database.

In addition, such guidance would be consistent with other recent Administration efforts, including the announcement on March 17, 2020, that the Centers for Medicare and Medicaid Services (CMS) would expand coverage of telehealth services under Medicare during the public health emergency. In connection with this announcement, CMS noted: “The benefits are part of the broader effort by CMS and the White House Task Force to ensure that all Americans – particularly those at high-risk of complications from the virus that causes the disease COVID-19 – are aware of easy-to-use, accessible benefits that can help keep them healthy while helping to contain the community spread of this virus.”<sup>3</sup>

We also note our full support of efforts by Congress to address this issue, including S. 3539, recently introduced by Senator Steve Daines. We are working to urge that that bill be included in the next COVID-19 legislation that Congress advances.

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 urgent request among the many other essential matters before you. We will continue to notify you of related areas where guidance is needed as we become aware. As always, please contact us to let us know how we can best assist you in your important efforts. Thank you again.

Sincerely,

A handwritten signature in black ink that reads "Katy Johnson". The signature is written in a cursive, flowing style.

Katy Johnson  
Senior Counsel, Health Policy

---

<sup>3</sup> <https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>.