Temporary Telehealth Relief for HSA Plans

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On March 15, 2022, the President signed government funding legislation, the Consolidated Appropriations Act, 2022 ("CAA-22"), into law. The legislation includes a prospective extension of relief that allows first dollar coverage of telehealth services from April 1, 2022 through December 31, 2022. This relief allows individuals with High Deductible Health Plans ("HDHPs") to receive free telehealth services prior to the satisfaction of their minimum deductible and remain eligible to make Health Savings Account ("HSA") contributions.

Background

Individuals may contribute to an HSA if they are covered by a qualifying HDHP and do not have other disqualifying coverage. Generally, telehealth or other remote health care services are considered other health care coverage that, if provided before satisfaction of the required deductible, may be disqualifying for purposes of contributing to an HSA.

The Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") was signed into law on March 27, 2020. Among other things, the CARES Act offered temporary relief related to telehealth and other remote care services when offered with an HDHP and HSA. Specifically, for plan years beginning on or before December 31, 2021, telehealth and other remote care services could be offered before satisfaction of the deductible without jeopardizing an individual's eligibility to contribute to an HSA.

Consolidated Appropriations Act, 2022

CAA-22 prospectively extends the CARES Act relief for the months of April – December 2022. The relief is permissive (not mandatory). As such, employers are not required to provide free or reduced-cost telehealth services to employees.

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Importantly, because the relief is not retroactive or tied to when a plan year begins (or ends), it creates a few administrative complexities for employers to consider. For example:

- **Calendar year plans (January 1, 2022 – December 31, 2022):** The CARES Act relief expired after December 31, 2021. Therefore, telehealth services that are provided for free or at a reduced cost before satisfaction of the deductible between January 1, 2022 – March 31, 2022 may be disqualifying coverage for purposes of HSA eligibility. This would mean no HSA contributions are permitted between January 1, 2022 and March 31, 2022. Beginning April 1, 2022 free or reduced cost telehealth (or other remote services) may be provided until December 31, 2022.

- **Non-calendar year plans:**

    - Example: March 1, 2021 – February 28, 2022 plan year. The CARES Act relief expired after February 28, 2022. Therefore, telehealth services that are provided for free or at a reduced cost before satisfaction of the deductible in the month of March 2022 may be disqualifying coverage for purposes of HSA eligibility and no HSA contributions would be permitted. Beginning April 1, 2022 free or reduced cost telehealth (or other remote services) may be provided until December 31, 2022.

    - Example: July 1, 2021 – June 30, 2022 plan year. The CARES Act relief expires after June 30, 2022. However, under CAA-22, telehealth or other remote care services may continue to be provided for free (or at a reduced cost) without jeopardizing HSA eligibility until December 31, 2022. The relief expires after December 31, 2022.

The examples above indicate no HSA contributions should be made for the months where an individual has disqualifying coverage. While this is generally correct, there is a special rule, the "last-month rule," which may permit an individual to make a full years' worth of HSA contributions without tax consequences if the individual is considered HSA eligible on Dec. 1 and remains HSA eligible for the following 13 months. Individuals should review their circumstances with tax advisors to understand whether this rule may be applicable.

Employer Action

Employers offering HDHPs with HSAs should consider whether to re-implement (or continue) free telehealth as part of a benefit offering. Employers with calendar year plans may have already re-introduced a cost associated with telehealth for HDHP/HSA participants once the CARES Act relief expired and should consider whether to waive those costs again given the temporary nature of this relief. Additionally, employers with non-calendar year plans should consider the administrative and communication burdens that may be imposed by providing relief that may expire prior to the end of the current plan year.

It is important that employers review these changes with their carriers, TPAs and telehealth vendors to understand their approach and communicate any changes with participants.

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