

July 10, 2023

## IRS Ending COVID-19 Relief for HDHPs/HSAs

The Internal Revenue Service (IRS) published [IRS Notice 2023-37](#) (also referred to as the “Notice”) on June 23, 2023, which revokes the existing COVID-19 relief that allows high deductible health plans (HDHPs) to provide first dollar coverage for COVID-19 testing and treatment without affecting the ability to contribute to health savings accounts (HSAs). This will affect calendar and non-calendar year HDHPs at different times, discussed in [more detail below](#). The Notice also clarifies that COVID-19 testing does not currently qualify for the HDHP preventive care safe harbor, so the ability to provide this benefit at no cost or at a discounted rate through an HDHP ends when the COVID-19 relief expires for the plan.

This Alert addresses the existing relief and its expiration, and it is applicable to any employer sponsoring an HDHP providing coverage for COVID-19 testing and treatment that bypasses the deductible.

### Background

The IRS released [IRS Notice 2020-15](#) early during the COVID-19 pandemic, which allowed qualified HDHPs to provide coverage for COVID-19 testing and treatment *before* a participant satisfies the minimum statutory HDHP deductible for the plan year without affecting the participant’s ability to make or receive HSA contributions. [IRS Notice 2020-29](#) later expanded this testing and treatment exception to include testing for influenza A & B, norovirus and other coronaviruses, and respiratory syncytial virus (RSV).

This relief does not automatically expire with the end of the COVID-19 Public Health Emergency (PHE) or Outbreak Period and remains in effect until revoked by the IRS. [FAQs](#) released on March 29, 2023 indicated the relief would remain in effect until further notice.

### Relief ends in 2024

Now that the COVID-19 National Emergency and PHE are over, the IRS believes the need for this particular HDHP/HSA relief is no longer necessary. IRS Notice 2023-37 limits the remaining relief period to HDHP plan years that **end on or before December 31, 2024**. The examples below assume the employer intends to maintain a qualified HDHP for HSA contribution purposes.

#### Example 1

ABC Company maintains a calendar year HDHP. The relief will end on December 31, 2024. The HDHP will not be able to provide first dollar coverage for COVID-19 testing or treatment as of January 1, 2025.

#### Example 2

ABC Company maintains an HDHP with a July 1 to June 30 plan year. The relief will end on June 30, 2024. The HDHP will not be able to provide first dollar coverage for COVID-19 testing or treatment as of July 1, 2024.

**Note:** This gives HDHPs more than a year’s advance notice to come into compliance, but it does mean the relief ends earlier for non-calendar year HDHPs.

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## Preventive care clarification

Under the preventive care safe harbor<sup>1</sup>, HDHPs can provide preventive care benefits before participants meet the applicable minimum statutory HDHP deductible for the plan year. This safe harbor includes screening for certain infectious diseases, including bacteriuria, chlamydial infection, gonorrhea, hepatitis B virus, hepatitis C virus, HIV, syphilis, and tuberculosis.<sup>2</sup>

In IRS Notice 2023-37, the IRS takes the position that COVID-19 is not like these infectious diseases and is more similar to common or episodic illnesses such as the flu. The Notice clarifies that the preventive care safe harbor does not include testing for common and episodic illnesses and indicates COVID-19 testing does not currently qualify for the HDHP preventive safe harbor.

The Notice re-confirms that items and services with an “A” or “B” recommendation rating from the U.S. Preventive Services Task Force (USPSTF) qualify as preventive care for purposes of the HDHP preventive care safe harbor.<sup>3</sup> The IRS adds that COVID-19 testing will qualify for the preventive care safe harbor if the USPSTF later gives it an “A” or “B” rating.

**Note:** If the USPSTF were to give COVID-19 testing an “A” or “B” rating, it would qualify for the HDHP preventive care safe harbor regardless of whether non-grandfathered plans must cover it without cost sharing under the ACA’s preventive services mandate (see our [earlier alert](#) addressing the ongoing litigation related to the Affordable Care Act’s preventive services mandate). USPSTF recommendations generally do not go into effect until the beginning of the first plan year following the one-year anniversary of the recommendation’s publication date.

## Next steps

Employers sponsoring qualified HDHPs should review their current plan design with their insurance carrier, third party administrator, and/or insurance broker to determine whether any changes to coverage for COVID-19 testing and treatment are necessary when the applicable relief period for their plan(s) end.

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<sup>1</sup> [Internal Revenue Code §223\(c\)\(2\)\(C\)](#)

<sup>2</sup> Appendix to [IRS Notice 2004-23](#)

<sup>3</sup> [IRS Notice 2013-57](#) added the Affordable Care Act’s mandated preventive services to the HDHP preventive care safe harbor in 2013. Earlier this year, the IRS indicated this remains the case for USPSTF “A” and “B” rated recommendations until further notice despite the ongoing *Braidwood* litigation (see [FAQs About Affordable Care Act and Coronavirus Aid, Relief, and Economic Security Act Implementation Part 59, Q/A #7](#)).

## About the author



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