December 27, 2024

Existing Telemedicine Relief for HDHPs and HSAs Expires

The clock strikes midnight

In 2020, the federal government enacted temporary relief excluding telemedicine as disqualifying other health coverage ("disqualifying coverage") when provided in conjunction with a high deductible health plan (HDHP). This relief broadly preserved participant eligibility for health savings account (HSA) contributions and allowed employers to offer telemedicine with a $0 copayment in conjunction with HDHPs.

The government extended this relief twice, with the most recent extension occurring as part of the Consolidated Appropriations Act, 2023 (CAA 2023). The CAA 2023 extension applies to HDHP plan years beginning *after* December 31, 2022 and *before* January 1, 2025, which means it does not apply to HDHP plan years beginning in 2025.

Despite multiple attempts in 2023 and 2024, Congress failed to pass legislation providing further relief before adjourning on December 21, 2024. As a result, most general telemedicine coverage will become disqualifying coverage for HSA contribution eligibility purposes again for **HDHP plan years beginning on or after January 1, 2025**.

This Alert summarizes the expiring telemedicine relief under the CAA 2023, the prospects and timing for further relief, and employer considerations. We will also summarize why telemedicine is generally disqualifying coverage and address how the loss of relief may affect certain other virtual health benefits.

This Alert is relevant for all employers offering or considering offering general telemedicine coverage in conjunction with an HDHP.

Existing telemedicine relief begins to expire

The initial, temporary telemedicine relief appeared as a response to the COVID-19 pandemic under The Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") and was intended to both ease financial access to medical care and promote social distancing.

There were two extensions to this relief, with the most recent appearing as part of the CAA 2023. The CAA 2023 extension applies to HDHP

Highlights

In a nutshell

Congress did not pass legislation extending the relief that excludes telemedicine as disqualifying coverage when offered in conjunction with an HDHP before it adjourned on December 21, 2024.

As a result, most general telemedicine coverage will become disqualifying coverage for HSA contribution eligibility purposes again for **HDHP plan years beginning on or after January 1, 2025**.

This Alert is relevant for all employers offering general telemedicine coverage in conjunction with an HDHP plan year beginning in 2025.

Employer action items

Employers that will offer or are planning to offer telemedicine benefits in conjunction with an HDHP for plan years beginning in 2025 should consider:

- Whether any steps should be taken to preserve HSA contribution eligibility; and
- Whether and when to communicate any changes to the telemedicine benefits available to affected employees; or
- Whether to adopt a wait-and-see approach and take no immediate action.

plan years beginning *after* December 31, 2022 and *before* January 1, 2025.

The failure to extend the existing relief further means that most general telemedicine coverage will become disqualifying coverage for HSA contribution eligibility purposes again for HDHP plan years beginning on or after January 1, 2025. This means affected HDHP participants will not be eligible to make or receive HSA contributions during HDHP plan years beginning in 2025 unless the telemedicine benefit meets one or more of the conditions described later in this Alert.[1]

Example 1

For a calendar year HDHP, the relief ends after December 31, 2024.

Example 2

For an HDHP operating on a July 1st – June 30th plan year, the relief ends after June 30, 2025.

An urban legend

We know that various third parties reported that the federal government did manage to extend telemedicine relief in late December, but this is incorrect.

The odds that further relief would occur as a separate piece of legislation were always remote. For most of 2024, we believed the likely vehicle for a relief extension (whether temporary or permanent) would be through its inclusion in the Consolidated Appropriations Act, 2025 (CAA 2025) or other comparable legislation.[2]

When the CAA 2025 stalled, Congress shifted its efforts to an interim spending bill to continue funding government operations through March 14, 2025. An interim spending bill became law on December 21, 2024 as the American Relief Act, 2025 (ARA 2025).

It is true that an ARA 2025 draft included a two-year extension to the telemedicine relief for HDHPs/HSAs, but that draft failed on December 19, 2024. The final bill signed into law was significantly cut down and did not include an extension. We confirmed further relief did not appear elsewhere in any last-minute legislation before Congress adjourned for its winter break.

Reports that the government did grant further telemedicine relief in late December were premature.

The prospects for further relief

There are three general scenarios that appear to cover the full range of possible outcomes:

1. **No further relief –** In other words, the relief simply expires with no further action by Congress.

2. **Prospective relief** – Congress provides new relief effective as of a later date in 2025 without retroactive effect. This will create a compliance gap between January 1, 2025, and the effective date of the new relief for 2025 HDHP plan years that begin during the gap period. This happened in early 2022. The 2022 extension left a compliance gap for HDHP plan years that began in January, February, or March of that year.[3] The IRS later gave employers some relief by largely shifting the compliance burden to the HDHP plan participants.[4]

3. **Retroactive relief** – Congress could ultimately provide new relief retroactive to January 1, 2025.

[1] This does not affect an individual's ability to use existing HSA funds from prior eligible contributions.

[2] The Consolidated Appropriations Act is a general omnibus spending bill passed each year to fund existing federal government operations.

[3] See Section 307 of the Consolidated Appropriations Act, 2022 and 26 USC §223(c)(2)(E)(i).

[4] See 2022 Instructions for IRS Form 8889.

We acknowledge that new relief is possible, but it seems Congress signaled it did not consider telemedicine relief to be a "must have" when push came to shove.

Somewhat counterintuitive: The telemedicine relief is popular with the health insurance industry and HDHP participants. It made sense during the COVID-19 pandemic, but continuing relief is somewhat counterintuitive. The relief allows a virtual outpatient visit to bypass the HDHP deductible without affecting an individual's eligibility for HSA contributions, while an in-person outpatient physician visit through the HDHP to receive the same services does not.

Timing

We assume any further relief will be tacked-on to major legislation rather than rushed through as an independent project. The major legislation candidates include: (i) the Consolidated Appropriation Act, 2025 or other comparable legislation, (ii) a potential extension of the 2017 tax cuts enacted during the prior Trump administration, and (iii) immigration legislation.

The odds that any of those occur before March are slim. The IRS does not have the technical authority to extend the relief by itself in the meantime.

Employer considerations

The current compliance risk applies to employers sponsoring HDHPs with plan years that begin in January 2025. This will expand to HDHPs with plan years beginning in February, March, April, and so on unless and until further relief appears. Employers that will offer or are planning to offer telemedicine benefits in conjunction with an HDHP plan year beginning in 2025 may wish to review this issue with appropriate advisors, which may include their legal counsel, tax advisors, insurance broker, and/or consultants. Considerations include:

- Whether any steps should be taken to preserve HSA contribution eligibility;[5] and
- Whether and when to communicate any changes to the telemedicine benefits available to affected employees; or
- Whether to adopt a wait-and-see approach and take no immediate action.

There may be a general bias to believe Congress will fix this situation. Please keep in mind that two of the three possibilities discussed earlier involve general telemedicine becoming disqualifying coverage for many HDHPs for at least a while. The only 100% safe play is for affected HDHPs to take steps to preserve HSA contribution eligibility while waiting to see if Congress acts.

Employers who suspend free/below fair market value telemedicine benefits while waiting for Congress to act can attempt to make affected employees whole through additional HSA contributions. The contributions could be "up front" and/or based on actual utilization should new relief go into effect.[6]

We will keep you informed if any further movement on this issue occurs.

[5] A number of vendors and other third parties may indicate this is unnecessary because of their high confidence of further relief, but this was also their position in 2024.

[6] Many employers may be unable to get utilization data from their telemedicine vendors, but employees paying for telemedicine visits should have receipts.

Telemedicine as disqualifying coverage

An HDHP participant with disqualifying coverage is ineligible to make or receive HSA contributions but can still use their existing HSA funds. Generally, telemedicine benefits are disqualifying coverage unless:

- The telemedicine benefits are not available until after an HDHP participant meets the statutory minimum annual HDHP deductible (known as a post-deductible benefit);
- The telemedicine benefits are only available for preventive services; or
- HDHP participants must pay the fair market value (FMV) cost for the telemedicine visit (≈$45)[7] prior to meeting the statutory minimum annual HDHP deductible.[8]

The EAP exception should not apply

Separately, most general telemedicine benefits should not be able to avoid the disqualifying coverage issue by qualifying as an "excepted benefit" under what is commonly referred to as the EAP exception.[9] As written, the EAP exception can apply to a broad range of benefits and services and does not solely apply to behavioral health care.

In addition to other limitations, the EAP exception requires that the benefit does not provide significant medical care. We believe a telemedicine benefit provides significant medical care if either of the following are true:

1. It allows for a large (e.g., >10) or theoretically unlimited number of visits per plan year without regard to a participant's actual number of visits during the plan year; and/or
2. The telemedicine benefit providers can write prescriptions, even if the allowable list of prescriptions is limited.

Relief as evidence: The various temporary relief measures applied to telemedicine benefits during the COVID-19 pandemic serve as evidence that the federal government does not believe most general telemedicine benefits qualify as excepted benefits. There would not have been any need for relief otherwise.

Other virtual health benefits at risk?

Our position has and continues to be that traditional behavioral health EAPs with high or theoretically unlimited visit limits do not qualify for the EAP exception described above and are also disqualifying coverage for HDHP/HSA purposes.

The telemedicine relief for HDHPs/HSAs also covered EAPs relying solely on virtual visits for the delivery of services, but the expiration of this relief also affects those virtual visit EAPs.

[7] The unofficial proxy for FMV is a correlation to the Medicare reimbursement rates for telemedicine visits of different lengths. We do not generally recommend setting the FMV lower than this amount.

[8] Employers do not have to adjust the cost of telemedicine visits once a participant meets the deductible, and many do not.

[9] Treasury Reg. §54.9831-1(c)(3)(vi); DOL Reg. §2590.732(c)(3)(vi)

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