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Expiring Telemedicine Relief for HDHPs and HSAs

Will they or won't they?

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.

This temporary relief has been extended twice, and the most recent extension occurred 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. Absent further relief, most telemedicine coverage will again become disqualifying coverage for HSA contribution eligibility purposes for HDHP plan years beginning on or after January 1, 2025.

This Alert summarizes why telemedicine is generally disqualifying coverage, the expiring telemedicine relief under the CAA 2023, prospects for further relief, and employer considerations to preserve employee HSA contribution eligibility for plan years beginning on or after January 1, 2025. This Alert is relevant for all employers offering general telemedicine/virtual health benefits in conjunction with an HDHP.

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

Highlights

In a nutshell

The current relief under the CAA 2023 that excludes telemedicine as disqualifying coverage for HSA purposes is set to expire for HDHP plan years beginning on or after January 1, 2025.

Without further relief, many telemedicine benefit programs will be disqualifying coverage if they continue to provide benefits at $0 or for a low copayment before participants meet the statutory minimum annual HDHP deductible.

This Alert is relevant for all employers offering general telemedicine/virtual health benefits in conjunction with an HDHP.

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:

- Discussing whether any steps should be taken to preserve HSA contribution eligibility with their telemedicine vendors and insurance brokers or consultants;
- Reviewing the issue with their legal and/or tax advisors; and
- Whether and when to communicate the potential need to change the telemedicine benefits available to affected employees.

- HDHP participants must pay the fair market value (FMV) cost for the telemedicine visit (≈$45)[1] prior to meeting the statutory minimum annual HDHP deductible.[2]

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.[3] 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 how many visits a participant actually uses; 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 telemedicine benefits qualify as excepted benefits. There would not have been any need for relief otherwise.

Existing telemedicine relief set to expire

The initial temporary 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 have been two extensions to this relief, with the most recent appearing as part of the CAA 2023. As of the date of this Alert, the CAA 2023 relief extension is set to expire at the end of this year. Without further relief, most telemedicine coverage will again become disqualifying coverage for HSA contribution eligibility purposes 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 plan years beginning in 2025 unless the telemedicine benefit meets one or more of the conditions described earlier.[4]

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.

[1] 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.

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

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

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

Prospects for further disqualifying coverage relief

Please note that we are merely indicating that the existing relief will expire without any further temporary or permanent relief from the federal government. MMA is not taking the position that there will be no further relief, and we believe there is a reasonable possibility that this will occur. Given that the disqualifying coverage issue and its existing relief are statutory,[5] it is not clear to us that the IRS has the ability to grant this relief independently.

We understand that certain telemedicine/virtual health vendors and other third parties believe further relief is highly likely and generally state that there is strong bipartisan support in Congress for further relief and ongoing efforts to accomplish this. We agree that there is bipartisan support in Congress to extend the relief, but we are also aware of some bipartisan opposition. Further, the efforts to extend the relief do not appear to be as far along as some suggest, and we know some vendors are developing contingency plans if the relief does expire.

1. H.R. 7623, Telehealth Modernization Act of 2024 – This is the proposed legislation most frequently cited to us by third parties as the source of further relief. However, the initial bill solely addressed telehealth access related to Medicare and did not include any mention of HDHPs or HSAs. To our knowledge, this is still the case.

2. H.R. 1843, Telehealth Expansion Act of 2023 – By contrast, H.R. 1843 permanently excludes telemedicine as disqualifying coverage. It is the most recent bill we are aware of that provides for further relief, but it appears there has been no activity on H.R. 1843 since June 2023.

Congress can obviously revise or revive an existing bill or propose a new bill to provide further relief. Similar to the prior extensions, the easiest course appears to be to incorporate the relief into the Consolidated Appropriations Act, 2025 (CAA 2025). The CAA 2025 will hopefully become law this year, but it could occur very late in December. For example, the CAA 2023 incorporating the last relief extension did not become law until December 29, 2022.

Somewhat counterintuitive: The relief is popular with the health insurance industry and HDHP participants. It made sense during the pandemic, but permanent 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, but an in-person outpatient physician visit through the HDHP to receive the same services does not.

Employer considerations

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

- Discussing whether any steps should be taken to preserve HSA contribution eligibility with their telemedicine vendors and insurance brokers or consultants;[6]
- Reviewing the issue with their legal and/or tax advisors; and
- Whether and when to communicate the potential need to change the telemedicine benefits available to affected employees.

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

[5] 26 U.S.C. §223(c)(1)(A), (B), and (E)

[6] Certain vendors and other parties may indicate this is unnecessary because of their high confidence of further relief.

About the author

Tarin Russell, J.D. is an Employee Health & Benefits Compliance Consultant for Marsh McLennan Agency's Compliance Center of Excellence.