

EMPLOYEE BENEFITS

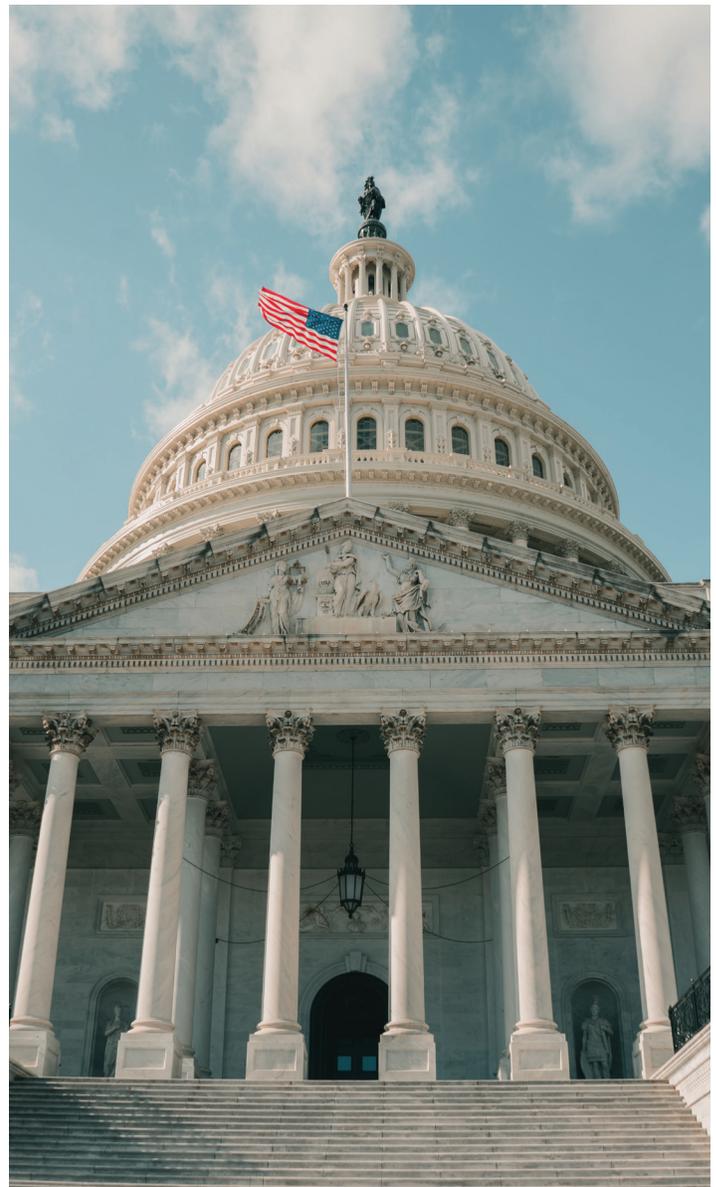
IRS Announces End to Pre-Deductible COVID-19 Coverage Relief For HDHPs; Other HDHP Updates

End of Relief for HDHPs Providing Pre-Deductible COVID-19 Coverage

On June 23, 2023, the IRS released [Notice 2023-37](#) clarifying the timeframe in which health plans may provide COVID-19 testing and treatment coverage prior to the satisfaction of the applicable IRS annual minimum deductible without affecting their status as a high-deductible health plan (HDHP). In prior relief announced in Notice 2020-15, the IRS allowed a health plan's status as an HDHP to remain unaffected if it provided coverage for COVID-19 testing and treatment before a plan participant satisfied their IRS minimum HDHP deductible. IRS Notice 2020-15 did not specify an end date for the relief.

The IRS has now clarified in Notice 2023-37 that the above-described relief only applies to plan years ending on or before December 31, 2024. This means that for plan years ending on or after January 1, 2025, a health plan or policy providing coverage for COVID-19 testing and treatment prior to a plan participant satisfying his/her/their IRS minimum deductible will no longer be considered a qualified HDHP under the Internal Revenue Code - affecting covered individuals' eligibility to establish and contribute to a Health Savings Account (HSA).

Notice 2023-37 also clarifies that COVID-19 [diagnostic testing](#) is not currently considered preventive care for HDHP purposes both under IRC Section 223(c)(2) (C) and the preventive care safe harbor described in Notice 2004-23.



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Confirmation that HDHPs May Cover Certain Preventive Services Recommended by the USPSTF

Notice 2023-37 also confirms that items and services recommended with an “A” or “B” rating by the United States Preventive Services Task Force (USPSTF) on or after March 23, 2010, are treated as preventive care for HDHP purposes under IRC Section 223(c)(2)(C), regardless of whether these items and services must be covered, without cost sharing, under Public Health Service (PHS) Act section 2713. In light of that confirmation, the IRS noted that if COVID-19 diagnostic testing were recommended with an “A” or “B” rating by the USPSTF, testing would be considered preventive care for HDHP purposes. This suggests that extra-agency action could be taken to cause COVID-19 testing to be considered preventive care for HDHP purposes. The practical effect of such action would mean a plan or policy could provide coverage for COVID-19 diagnostic testing before an individual satisfies their IRS minimum HDHP deductible without affecting the covered individual’s eligibility to contribute to an HSA.

This guidance addresses the possibility that a portion of PHS Act section 2713 could be found to be unconstitutional as a result of the [Braidwood](#) case.

Permanent Telehealth HSA Relief Bill Introduced

Legislation has recently been introduced in the U.S. Senate to make the CAA of 2022’s temporary relief permanent, allowing employees to receive first-dollar coverage for telehealth and other remote care that would not interfere with an individual’s ability to remain HSA-eligible (see our article [here](#)). The bill, named the TELEHEALTH HSA Act of 2023, has yet to be approved by the Senate. Employers that sponsor HDHPs should watch for future developments concerning this bill.





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