

## Administration Eyes Expanding HDHP Pre-Deductible Coverage to Chronic Disease Management

A recent draft executive order would direct the IRS to expand the list of preventive care services that an HDHP plan can cover before the participant or beneficiary has met the plan's deductible. Specifically, it would update the preventive care rules for HDHPs to include services or benefits, including medications, relating to care for chronic disease management. If finalized as proposed, this provision may address some plan sponsors' concerns about offering HDHP plans as the sole – or even a – coverage option because of the limited definition of the preventive services available for pre-deductible coverage. The timing for finalization of this draft executive order is not clear.

### Background

To be eligible to set up a health savings account (HSA), an individual must be covered under a high-deductible health plan (HDHP) and have no other health coverage other than certain "permitted" coverage (e.g., dental and vision). An HDHP must not pay any benefits before the deductible for that year is satisfied, other than benefits for "preventive care services" under Code Section 223(c)(2)(C). IRS guidance sets forth the types of services considered preventive care for HDHP purposes, which include certain preventive care screenings as well as services required by the Affordable Care Act (ACA). (See our [September 17, 2013 For Your Information](#).)

Over the years, some stakeholders have urged the IRS to expand the preventive services safe harbor to include those that help individuals manage chronic conditions. The concern behind this push is that HDHP coverage can cause people with chronic conditions to forego the pre-deductible disease management care they need, which can lead to higher cost Medicare care – for example, emergency room visits that could have been avoided by following a disease management regimen.



## Covering the Management of Chronic Illnesses on a Pre-Deductible Basis

A recent [draft executive order](#) (Section 6) would direct the IRS to update the preventive care rules for HDHPs “to include services or benefits, including medications, intended to prevent chronic disease progression or complications, for the purpose of helping patients adhere to clinical regimens thereby reducing costs of healthcare.” If implemented as drafted, it would allow HSA-eligible health plans to cover services to manage chronic illnesses before the HDHP participant or beneficiary has met the plan’s deductible. The IRS would be responsible for determining which services and medications will qualify as preventive care services under the expanded definition.

The timing for finalization of this draft provision is not clear.

**Comment.** The draft is designated “\*\*INTERNAL, DELIBERATIVE, PRE-DECISIONAL, CONFIDENTIAL, PRIVILEGED\*\*,” indicating that the content may change before it is finalized, or that it may not even be finalized.

### A Plan Cost Saver?

Would expanding the preventive care definition as the draft executive order proposes ultimately lower plan costs? It remains to be seen.

Proponents of this approach argue that incentivizing individuals to actively manage their chronic conditions will ultimately drive down the cost of care and generally increase both employer and employee interest in HDHP coverage options. Additionally, the possibility of legislation to enhance the value of HSAs could make HDHPs with an expanded definition of preventive care even more attractive. Although the prospects for ACA repeal and replace are uncertain at best, stand-alone legislation enhancing HSA features may well be introduced and garner enough support to move forward.

On the other hand, making it easier for individuals with chronic conditions to meet their deductible could result in more spending on health care once the deductible is satisfied and most health care services are covered.

### In Closing

This draft executive order, if finalized as proposed, may address some plan sponsors’ concerns about offering HDHP plans as the sole – or even a – coverage option because of the limited preventive services currently viable for pre-deductible coverage.

#### EO Addresses Drug Costs

The provision on preventive service care for HDHP coverage is part of a draft executive order entitled “Reducing the Cost of Medical Products and Enhancing American Biomedical Innovation” that addresses various issues concerning rising drug costs.

#### Enhanced HSAs?

Both the House and Senate ACA repeal replacement proposals featured provisions that would significantly increase the permitted maximum monthly contribution limits, allow HSA funds to be used for additional expenses, reduce the penalty from 20% to 10% for nonqualified HSA distributions, and allow married individuals 55 and older each to contribute a \$1,000 catch-up contributions to the same HSA – and the Senate bill additionally allowed HSAs to reimburse eligible expenses for adult children through the end of the year that the adult child reaches age 26 as well as premiums paid for an individual (not group) HDHP. (See our [July 31, 2017](#) *Legislate*.)

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