



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

April 16, 2021

Dana Popish Severinghaus
Acting Director
Illinois Department of Insurance
122 S. Michigan Avenue, 19th Floor
Chicago, IL 60603

Attention: KC Stralka

Dear Ms. Popish Severinghaus:

I am responding to your inquiry dated March 8, 2021, about the interaction of copay accumulator rules and the ability of a health plan to qualify as a high deductible health plan (HDHP) that permits an individual to contribute to a health savings account (HSA). You also asked about the benefits that may be provided by an HDHP before the minimum annual deductible is satisfied.

Section 223 of the Internal Revenue Code allows eligible individuals to deduct contributions to HSAs. Among the requirements for an individual to qualify as an eligible individual under Section 223(c)(1), an individual must be covered by an HDHP and have no disqualifying health coverage. Under Section 223(c)(2), an HDHP is a health plan that satisfies certain requirements, including requirements related to minimum deductibles and maximum out-of-pocket expenses.

Generally, under Section 223(c)(2)(A), an HDHP may not provide benefits for any year until the minimum deductible for that year is satisfied. However, Section 223(c)(2)(C) provides that "[a] plan shall not fail to be treated as a high deductible health plan by reason of failing to have a deductible for preventive care (within the meaning of section 1861 of the Social Security Act, except as otherwise provided by the Secretary)." Therefore, an HDHP may provide benefits defined as preventive care for purposes of Section 223 without a deductible, or with a deductible below the minimum annual deductible otherwise required by Section 223(c)(2)(A).

The issue raised by your inquiry is what amounts count toward the minimum annual deductible for an HDHP. Notice 2004-50, 2004-33 I.R.B. 196, Q&A-9, provides that an individual covered by an HDHP who also has a discount card for health care services or products, may still contribute to an HSA provided that the individual is required to pay the costs of the covered health care until the minimum annual deductible for the HDHP is satisfied. In other words, the minimum annual deductible may only be satisfied by actual medical expenses the covered individual incurred. For example, if a covered

individual is prescribed a drug that costs \$1,000, but a discount from the drug manufacturer reduces the cost to the individual to \$600, the amount that may be credited towards satisfying the deductible is \$600, not \$1,000. This same principle also applies to a third-party payment, such as a rebate or coupon, that has the same effect as a discount.

As noted above, an HDHP may provide benefits defined as preventive care for purposes of Section 223 without a deductible, or with a deductible below the minimum annual deductible otherwise required by Section 223(c)(2)(A). A state statute requiring a plan to provide benefits other than preventive care before the minimum annual deductible is satisfied does not change this outcome. Notice 2004-23, 2004-15 I.R.B. 725, explains that state law requirements do not determine if health care is preventive care under Section 223(c)(2)(C). For example, Notice 2018-12, 2018-12 I.R.B. 441, clarifies that male contraception and sterilization services are not preventive care for purposes of Section 223(c). Therefore, a health plan that provides benefits for these services without a deductible or with a deductible below the minimum annual deductible for an HDHP is not an HDHP, even if coverage is required by state statute.

I hope this information is helpful. If you have additional questions, please contact me or Kari DiCecco at 202-317-5500.

Sincerely,

Denise Trujillo
Branch Chief, Health and Welfare
Office of Associate Chief Counsel
(Employee Benefits, Exempt Organizations,
and Employment Taxes)

Keith Herrick
Dirigo Partners
LD 1783

HCIFS Members,

I hope this message finds you all well. My client, Sam Hallemier of PCMA, submitted his written testimony on LD 1783 this evening, but we wanted to ensure you also had the two attached documents for his time before you tomorrow.

See attached:

- “Explaining Manufacturer Coupons” is a one pager explaining what copay coupons are and the impact they have on costs.
- IRS letter outlining that copay assistance cards are banned for HDHP.

If you have any questions about these or his testimony tomorrow, please do not hesitate to ask him while he is with you or reach out to me at any time.

Thank you and we look forward to another session before your committee!

Keith