

Legal Update

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IRS Expands List of Preventive Care Benefits for HDHPs

On Oct. 17, 2024, the IRS issued [Notice 2024-75](#) (the Notice) to expand the list of preventive care benefits permitted to be provided by a high deductible health plan (HDHP) without a deductible (or with a deductible below the minimum deductible) to include:

- **Over-the-counter (OTC) oral contraceptives**, including OTC birth control pills and emergency contraceptives, for individuals potentially capable of becoming pregnant, regardless of whether they are purchased with a prescription; and
- **Male condoms**, regardless of whether they are purchased with a prescription and regardless of the gender of the individual covered by the HDHP who purchases them.

The Notice also clarifies that the following items and services qualify as preventive care for HDHP purposes:

- **All types of breast cancer screenings**, not just mammograms, for individuals who have not been diagnosed with breast cancer;
- **Continuous glucose monitors** for individuals diagnosed with diabetes; and
- **Selected insulin products**, regardless of whether they are prescribed to treat an individual diagnosed with diabetes or prescribed for the purpose of preventing the exacerbation of diabetes or the development of a secondary condition.

HDHPs and Preventive Care

Individuals must be covered by an HDHP (and have no disqualifying health coverage) to be eligible to contribute to a health savings account (HSA). To qualify as an HDHP, a health plan cannot pay benefits—**except for preventive care benefits**—until the required minimum deductible has been satisfied.

An HDHP may apply a low deductible (or no deductible) to its coverage of preventive care without jeopardizing individuals' HSA eligibility. Note that the Affordable Care Act (ACA) requires non-grandfathered health plans to cover specific recommended preventive care services on a "first-dollar basis" (that is, without any copayments, deductibles or other cost sharing). Currently, the ACA's preventive care mandate requires health plans to cover OTC preventive products without cost sharing only when they are prescribed by a health care provider.

Effective Dates

The Notice's changes for HDHPs have different retroactive effective dates. The IRS' new guidance for OTC oral contraceptives and male condoms is effective for plan years beginning on or after Dec. 30, 2022. Other effective dates include April 12, 2004, for breast cancer screenings; July 17, 2019, for continuous glucose monitors; and plan years beginning after Dec. 31, 2022, for selected insulin products.

HIGHLIGHTS

- The IRS has issued guidance that expands the preventive care items and services that HDHPs may cover before plan deductibles are met.
- These items include OTC oral contraceptives, including emergency contraceptives, and male condoms, regardless of whether they are purchased with a prescription.
- Employers with HDHPs should review their plans' design and consider whether to cover these OTC items without a deductible.

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