

## Part III - Administrative, Procedural, and Miscellaneous

Notice 2004-23

### PURPOSE

This notice provides a safe harbor for preventive care benefits allowed to be provided by a high deductible health plan (HDHP) without satisfying the minimum deductible under section 223(c)(2) of the Internal Revenue Code.

### BACKGROUND

Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, added section 223 to the Internal Revenue Code to permit eligible individuals to establish Health Savings Accounts (HSAs) for taxable years beginning after December 31, 2003.

Among the requirements for an individual to qualify as an eligible individual under section 223(c)(1) (and thus to be eligible to make tax-favored contributions to an HSA) is the requirement that the individual be covered under an HDHP. An HDHP is a health plan that satisfies certain requirements with

respect to minimum deductibles and maximum out-of-pocket expenses.

Generally, an HDHP may not provide benefits for any year until the deductible for that year is satisfied. However, section 223(c)(2)(C) provides a safe harbor for the absence of a preventive care deductible. That section states, “[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 1871 of the Social Security Act, except as otherwise provided by the Secretary).” An HDHP may therefore provide preventive care benefits without a deductible or with a deductible below the minimum annual deductible. On the other hand, there is no requirement in section 223 that an HDHP provide benefits for preventive care or provide preventive care with a deductible below the minimum annual deductible.

#### PREVENTIVE CARE SAFE HARBOR

Preventive care for purposes of section 223(c)(2)(C) includes, but is not limited to, the following:

- Periodic health evaluations, including tests and diagnostic procedures ordered in connection with routine examinations, such as annual physicals.
- Routine prenatal and well-child care.
- Child and adult immunizations.
- Tobacco cessation programs.
- Obesity weight-loss programs.
- Screening services (see attached APPENDIX).

However, preventive care does not generally include any service or benefit intended to treat an existing illness, injury, or condition (See below for request for comments regarding drug treatments.)

## INTERACTION WITH STATE LAW HEALTH CARE REQUIREMENTS

Section 220(c)(2)(B)(ii) allows a high deductible health plan for purposes of an Archer Medical Savings Account to provide preventive care without a deductible if required by State law. However, section 220 does not define preventive care for this purpose. Section 223(c)(2)(C), for purposes of an HSA, does not condition the exception for preventive care on State law requirements. State insurance laws often require health plans to provide certain health care without regard to a deductible or on terms no less favorable than other care provided by the health plan. The determination of whether health care that is required by State law to be provided by an HDHP without regard to a deductible is “preventive” for purposes of the exception for preventive care under section 223(c)(2)(C) will be based on the standards set forth in this notice and other guidance issued by the IRS, rather than on how that care is characterized by State law.

## COMMENTS REQUESTED

Notice 2004-2, 2004-2 I.R.B. 269, requested comments concerning the appropriate standard for preventive care in section 223(c)(2)(C). We continue to request comments on the appropriate standard for preventive care, and in

particular, recommendations concerning any benefit or service that should be added to those set forth in this notice and appendix. In addition, we request comments on the extent to which benefits provided by an employee assistance program, mental health program or wellness program may qualify as preventive care, including comments regarding the scope of treatments provided as benefits through counseling and health assessments. In particular, we request comments on the extent to which drug treatments, either solely by prescription or as part of an overall treatment regimen should be treated as preventive care and the appropriate standards for differentiating between drug treatments that would be considered preventive care and those that would not be considered preventive care.

Send comments to: CC:PA:LPD:PR (Notice 2004-2), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Comments may be hand-delivered between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (Notice 2004-2), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C. Alternatively, taxpayers may submit comments electronically at:

Notice.2004.2.Comments@irsounsel.treas.gov (a Service Comments e-mail address).

#### DRAFTING INFORMATION

The principal author of this notice is Shoshanna Tanner of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government

Entities). For further information regarding this notice contact Ms. Tanner on (202) 622-6080 (not a toll-free call).

## APPENDIX

### Safe Harbor Preventive Care Screening Services

#### **Cancer Screening**

Breast Cancer (e.g., Mammogram)  
Cervical Cancer (e.g., Pap Smear)  
Colorectal Cancer  
Prostate Cancer (e.g., PSA Test)  
Skin Cancer  
Oral Cancer  
Ovarian Cancer  
Testicular Cancer  
Thyroid Cancer

#### **Heart and Vascular Diseases Screening**

Abdominal Aortic Aneurysm  
Carotid Artery Stenosis  
Coronary Heart Disease  
Hemoglobinopathies  
Hypertension  
Lipid Disorders

#### **Infectious Diseases Screening**

Bacteriuria  
Chlamydial Infection  
Gonorrhea  
Hepatitis B Virus Infection  
Hepatitis C  
Human Immunodeficiency Virus (HIV) Infection  
Syphilis  
Tuberculosis Infection

#### **Mental Health Conditions and Substance Abuse Screening**

Dementia  
Depression  
Drug Abuse  
Problem Drinking  
Suicide Risk  
Family Violence

#### **Metabolic, Nutritional, and Endocrine Conditions Screening**

Anemia, Iron Deficiency  
Dental and Periodontal Disease  
Diabetes Mellitus

Obesity in Adults  
Thyroid Disease

### **Musculoskeletal Disorders Screening**

Osteoporosis

### **Obstetric and Gynecologic Conditions Screening**

Bacterial Vaginosis in Pregnancy

Gestational Diabetes Mellitus

Home Uterine Activity Monitoring

Neural Tube Defects

Preeclampsia

Rh Incompatibility

Rubella

Ultrasonography in Pregnancy

### **Pediatric Conditions Screening**

Child Developmental Delay

Congenital Hypothyroidism

Lead Levels in Childhood and Pregnancy

Phenylketonuria

Scoliosis, Adolescent Idiopathic

### **Vision and Hearing Disorders Screening**

Glaucoma

Hearing Impairment in Older Adults

Newborn Hearing