



High Deductible Health Plans (HDHP) used with Health Savings Accounts (HSA)

The use of a health savings account (HSA) may encourage your employees to be more involved in the decisions associated with their own health care. The Internal Revenue Service applies detailed rules on the set up and administration of HSA's. In order for the account holder to benefit from tax advantages associated with such an account, the individual must also be covered under a qualifying high deductible health plan (HDHP).

The following are some considerations a plan sponsor should use in designing such a HDHP.

- ♦ **The primary HSA account holder (your employee) cannot be enrolled in certain other health coverage and still contribute to the HSA.** Your employee will not be able to make contributions to the HSA without incurring additional taxes and penalties if the employee has coverage under any of the following:
 - non-HDHP coverage through another employer, or under COBRA;
 - Medicare (enrollment in Medicare A only would still be impermissible coverage);
 - Veteran's Affairs coverage. If an individual is eligible for VA coverage, but has not used such coverage for three months, he or she can still contribute to, and use, an HSA;
 - TriCare;
 - a flexible spending account (FSA) or health reimbursement arrangement (HRA) reimbursing medical expenses, other than a "limited purpose" FSA or HRA (see below);
 - coverage as a dependent under a spouse's or parent's health plan that is not a HDHP;
 - a separate plan covering only prescription drugs or mental health care;
 - a deductible reimbursement arrangement; or
 - an on-site clinic offering significant medical care for free or at discounted rates for employees that are lower than would be offered under a PPO contract. For example, if a physician practice or hospital provided treatment to its own employees without charge, or a pharmacy provided drugs to its own employees for less than would be charged to another participating health plan, this would be considered as impermissible coverage.
 - Telemedicine programs that provide free or reduced-cost benefits before an individual meets his HDHP deductible will be considered disqualifying coverage for HSA eligibility purposes.

A dependent of the primary account holder in an HSA can still use HSA funds for reimbursement of his or her health care expenses paid by the primary account holder, even if enrolled in any of the above coverages, as long as the dependent meets the IRS rules to be considered a qualifying dependent for this purpose, and all other sources of reimbursement have been exhausted prior to utilizing the HSA funds. A dependent is considered a qualifying dependent by the IRS if they are the spouse of a primary account holder or any individual that the primary account holder claims as a dependent on his or her federal tax return. In addition, individuals who are not claimed on the primary account holder's tax return are able to use HSA funds for health care



expense reimbursement, unless 1) the individual filed a joint return; 2) the individual had gross income in excess of the amount allowed to be claimed as a dependent; 3) the primary account holder or his or her spouse if filing jointly, could be claimed as a dependent on someone else's return; or 4) the dependent is claimed as a dependent by his or her other parent, including an ex-spouse.

Any employee who is covered under any of the above can still be enrolled in the HDHP. He or she would just not be able to contribute to an HSA during the time he or she had such other coverage without incurring tax penalties.

If you have a significant number of employees who have these types of coverage in addition to the employer health plan, it might be best to offer another plan option, such as a non-HDHP with a lower deductible, to those employees who are 65 or older and have elected Medicare coverage to make up for the loss of the HSA. To avoid age discrimination issues, the coverage offered to the older employees should be equal in cost to the employer, or better than, that offered to the younger employees.

♦ **Coverage under any of the following would not disqualify an employee from making contributions to the HSA:**

- another qualifying HDHP;
- a plan providing only “permitted expenses.” This includes benefits such as dental or vision, preventive care or wellness services only, coverage for a specific disease such as cancer, worker’s comp, auto insurance providing medical benefits, or policies paying a specific amount per day (such as AFLAC plans);
- a limited purpose HRA or FSA. This would be an account that reimburses only expenses that are permitted expenses, or that only reimburses medical expenses after the deductible in the HDHP has been satisfied;
- a “discount card” offering services or supplies at managed care market or PPO rates, rather than those rates offered to the general public, provided that the discounted cost of the item is still subject to the deductible in the HDHP; or
- an on-site clinic maintained by any employer offering only care for work related injuries or other permitted expenses, preventive care or minor treatment, such as administering allergy injections or providing non-prescription pain relievers.

♦ **The in-network deductible and out-of-pocket limits cannot exceed the amounts established by the IRS for such a plan, which are subject to change each year.**

The IRS issues a notice every year, generally in the spring or early summer, outlining the minimum annual in-network deductible and maximum out-of-pocket limits that will be in effect for the following calendar year. This minimum deductible and maximum out-of-pocket listed in this notice are for individuals with self or employee-only coverage, and individuals with family coverage. Under the HDHP model envisioned by the IRS, all expenses applied to the deductible in a plan covering a family, that are incurred by any family member, must be applied to the deductible before any expenses that are subject to the deductible can be paid for any family members for that year. However, most health plans providing family coverage allow for an individual deductible for each family member (after which expenses could be paid for that individual), with a family deductible limit applied for all family members. To accommodate this type of deductible structure, some HDHPs employ what is known as an “embedded deductible,” which means that the individual deductible level (including that applied to employees with self-only coverage) is set at or above the IRS



minimum family deductible limit, with a higher accumulative limit applied to the family as a whole.

The maximum out-of-pocket limit is a different issue. A plan could still apply separate in-network out-of-pocket limits for self-only and family coverage within the limits established by the IRS for that year. These limits are usually different from (and likely less than) the out-of-pocket limits established by the ACA for non-grandfathered health plans. To accommodate the ACA limits, therefore, a plan is still required to set the individual out-of-pocket limit for someone in a non-grandfathered family plan within the level permitted under the ACA rules. For example, in 2019, the HDHP out-of-pocket limits are \$6,750.00 for self-only coverage, and \$13,500.00 for family coverage. However, the individual out-of-pocket limit under the ACA is \$7,900.00 per individual. Therefore, the self-only coverage could only have up to a \$6,750.00 limit, and family coverage would have a \$7,900.00 per individual limit with a \$13,500.00 accumulative family limit.

If the plan chooses to apply the same out-of-pocket limits to all covered persons, that out-of-pocket limit cannot exceed the self-only out-of-pocket limit established by the IRS for that year. In the 2019 example, that would mean that the maximum out-of-pocket limits would be \$6,750.00 per individual and \$13,500.00 per family.

Also, while it is still possible under a non-grandfathered plan to exclude non-essential health care benefits from the out-of-pocket limits, or to set up a separate prescription plan to avoid applying prescription benefits to the out-of-pocket limits in the medical plan, all medical expenses, including prescription benefits and non-essential health benefits, have to apply to the out-of-pocket limits if they are received from an in-network provider in a qualifying HDHP.

The minimum deductibles described above still apply to out-of-network coverage, but the family out-of-pocket limits, if any, for out-of-network coverage can exceed the amounts set by the IRS. If the plan does not utilize a network, all expenses covered by the plan would be subject to these minimum and maximum limits.

♦ **The accumulation period for a HDHP should be 12 months.**

This may come up if the plan applies a deductible carryover provision (i.e. expenses applied to the deductible during the final three months of a plan year will apply to the next plan year's deductible). As this essentially makes the deductible accumulation period 15 months, under the IRS rules, the minimum annual deductible allowed would have to be proportionally increased to cover the additional three-month accumulation period. For 2019, therefore, using the \$2,700.00 minimum family deductible set by the IRS, if deductible carryover were applied, the family deductible would need to be increased by \$675.00, up to \$3,375.00 for the year. We therefore recommend not using a carryover feature in a HDHP.

♦ **No expenses, other than preventive care, can be paid under a HDHP prior to the satisfaction of the deductible.**

Preventive care under a HDHP is defined differently than it is under the ACA. Under the ACA, the definition is based on recommendations made by specific established medical authorities. Under a HDHP, this term is much more loosely defined, and may include services and supplies that would not necessarily be covered without cost sharing under a non-grandfathered plan. In 2004, the IRS stated that any service or supply that is intended to treat an illness or injury would not be considered a "preventive" service for the purposes of the HDHP rules, and provided a few examples of what that could be considered preventive. They asked for public comments at that



time, but, unfortunately, have not issued any further guidance. Obviously, any recommended preventive service that is covered under the ACA will need to be paid at 100% if the plan is non-grandfathered. The example used by the IRS also included pre-natal care and certain screening services that may or may not be part of the ACA preventive services.

The guidance is not clear in other areas, including what prescription drugs can be paid without a deductible. Drugs to prevent high blood pressure or high cholesterol levels can probably be considered preventive. Some plans have included diabetes drugs and supplies, or certain anti-psychotic drugs to be preventive drugs, on the theory that such products are not actually treating the conditions, but rather preventing serious complications of these conditions. At this point, a plan should make a good faith effort to define a service or supply as preventive, using the guidance provided by the IRS to date.

Although it is not covered under the IRS guidance, it is also recommended that the health plan apply certain services to the deductible, like elective sterilizations for men (elective sterilizations for females are included in the ACA recommendations). While this service may not always be seen as actually treating an illness (for men) it is also not preventing an illness for these individuals.

- ♦ **Copayments can still be applied under a HDHP, but only after the deductible is satisfied.**

Any copayment applied for in-network services, including under the drug card or mail order coverage, would still need to be applied to the annual out-of-pocket limits discussed above.

The MedBen Compliance Department is here to help you with the design of your HDHP. The IRS also has information regarding HSAs available on its website at www.irs.gov. If you have any questions, please contact Erin Kelly in MedBen's Compliance Department at (740) 522-7368 or (800) 423-3151, ex 368.