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IRS Allows Additional Expenses for Chronic Conditions to be Treated as Preventive Care Under HSA Rules

Through Notice 2019-45, the IRS has issued guidance expanding the preventive care benefits that can be provided by a high-deductible health plan (HDHP) on a no-deductible or low-deductible basis without any adverse effect on HSA eligibility. Under the HSA rules, preventive care generally does not include services or benefits intended to treat (as opposed to prevent) existing illnesses, injuries, or conditions. But a June 2019 executive order called for changes that would allow HDHPs to provide additional low-cost preventive care to help maintain the health of individuals with chronic conditions and prevent a condition from worsening and resulting in consequences that require more extensive medical intervention (e.g., heart attacks and strokes).

In this Notice, the IRS has determined that for purposes of the preventive care safe harbor, certain medical services and items purchased, including prescription drugs, that are used for certain chronic conditions may be classified as preventive care and provided on a no-cost or reduced-cost basis prior to exhaustion of an HDHP deductible. The Notice includes an Appendix, which lists the services, prescription drugs and medical devices that now qualify as preventive care with respect to HSA rules for individuals with chronic conditions including asthma, congestive heart failure, depression, diabetes, heart disease, hypertension and osteoporosis. For example, for diabetics, preventive care that can be provided pre-deductible now includes treatments such as insulin and other glucose-lowering agents, retinopathy screening, glucose meters, AC1 testing and statins.

Note that Notice 2019-45 does not expand the scope of preventive care beyond the specific medical services and items listed in the Appendix. Items not on the list (or prescribed for conditions other than those on the list) may not be treated as preventive. In addition, the Notice makes clear that it does not expand health care reform's definition of preventive care that must be provided without cost sharing. The guidance is effective immediately.

This is good news for health plans that would like to furnish certain medications or treatments on a no-cost or low-cost basis to increase adherence to a treatment regime that can help prevent the worsening of a condition and the need for more extensive (and more expensive) medical intervention. Many health plans may already treat similar expenses for chronic conditions as preventive care for HSA purposes, and in some cases may provide treatments not on the list. Note that while this Notice legitimizes the existing practice for treatments on the list, it clarifies that other treatments not on the list should not be treated as preventive care and provided on a cost-free or low-cost basis prior to HDHP deductible exhaustion. The Notice and complete list of conditions and treatments can be accessed via the link below.

To view and download the official IRS notice, please visit:
<https://www.irs.gov/pub/irs-drop/n-19-45.pdf>

Please visit [moreton.com/category/compliance-updates](https://www.moreton.com/category/compliance-updates) for more information and to view other client alerts. This Client Alert was written by Carolyn Cox, Moreton & Company's in-house corporate counsel who provides our clients with compliance services. For additional questions, please contact Carolyn at 801-715-7110 or ccox@moreton.com.

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