

LEGAL UPDATE



HIGHLIGHTS

- In response to the COVID-19 pandemic, the IRS allowed HDHPs to pay for COVID-19 testing and treatment without a deductible.
- Effective for plan years ending after Dec. 31, 2024, HDHPs can no longer provide benefits for COVID-19 testing and treatment without a deductible.
- COVID-19 testing does not qualify as preventive care under current guidelines.
- Items and services with an A or B rating by the USPSTF are preventive care for HDHPs, regardless of whether these items and services must be covered under the ACA's preventive care mandate.

IRS Issues Guidance for HDHPs on COVID-19 and Preventive Care

On June 23, 2023, the IRS issued [Notice 2023-37](#) to update its guidance for high deductible health plans (HDHPs) on expenses related to COVID-19 testing and treatment. Notice 2023-37 also clarifies whether certain items and services are treated as preventive care under the tax rules for HDHPs.

Only individuals covered by HDHPs can contribute to health savings accounts (HSAs). Generally, an HDHP cannot pay medical expenses until the annual minimum deductible has been reached. However, an HDHP may provide preventive care benefits without a deductible or with a deductible below the annual minimum deductible.

COVID-19 Testing and Treatment

In response to the COVID-19 pandemic, the IRS issued [Notice 2020-15](#) in March 2020 to allow HDHPs to pay for COVID-19 testing and treatment before plan deductibles have been met, without jeopardizing their status. In Notice 2023-37, the IRS explains that, now that the COVID-19 federal emergency periods have ended, the relief provided by Notice 2020-15 is no longer needed and applies only with respect to plan years ending on or before Dec. 31, 2024.

For plan years ending after Dec. 31, 2024, an HDHP is not permitted to provide benefits for COVID-19 testing and treatment without a deductible (or with a deductible below the minimum deductible for an HDHP).

Preventive Care

The IRS has provided a safe harbor for preventive care services that may be covered by an HDHP without a deductible ([Notice 2004-23](#)). This preventive care safe harbor includes certain screening services but does not include any service to treat an existing illness, injury or condition. Notice 2023-37 clarifies that the IRS' preventive care safe harbor does not currently include COVID-19 screening.

In addition, the Affordable Care Act (ACA) requires most health plans to cover a set of preventive care services without imposing a deductible when the services are provided by in-network providers. Among these are evidence-based items or services that have, in effect, a rating of A or B in the [current recommendations](#) of the U.S. Preventive Services Task Force (USPSTF).

In March 2023, the U.S. District Court for the Northern District of Texas [struck down](#) the ACA's preventive care coverage requirements based on an A or B rating by the USPSTF on or after March 23, 2010. While the District Court's ruling is currently on hold pending the case's appeal, the future of this coverage requirement is uncertain. Notice 2023-37 clarifies that HDHPs may continue to treat items and services with an A or B rating by the USPSTF on or after March 23, 2010, as preventive care that may be covered without a deductible, regardless of whether this coverage is required under the ACA.

Notice 2023-37 also explains that, if COVID-19 testing were to be recommended by the USPSTF with an A or B rating, HDHPs could cover that testing without a deductible.