

SmarterHealthCareCoalition

March 30, 2023

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

The Honorable Danny Werfel
Commissioner
Internal Revenue Service
1111 Constitution Avenue NW
Washington, D.C. 20224

Dear Secretary Yellen and Commissioner Werfel:

The Smarter Health Care Coalition (the Coalition) appreciates our long-standing work together to make it easier for Americans enrolled in Health Savings Account (HSA)-eligible high deductible health plans (HDHPs) to have access to pre-deductible coverage of high-value preventive care, including chronic disease prevention. The Coalition represents a broad-based, diverse group of health care stakeholders and taxpayers, including consumer groups, employers, health plans, life science companies, physician organizations, and academic centers. The Coalition is squarely focused on achieving “smarter health care” by removing barriers to high-value, evidence-based health care services and medications. This includes ensuring Americans have pre-deductible access to high-value health care services.

The 36 diverse stakeholders listed below write today to bring to your attention an important issue that may soon arise regarding the coverage of certain preventive services in HSA-eligible plans, due to recent litigation. Specifically, we are writing in regard to [Notice 2013-57](#), which was issued by Treasury and IRS as part of the implementation of the Affordable Care Act (ACA). As you know, in order for a plan to qualify as HSA-eligible, among other requirements, it generally may not provide benefits until the minimum deductible for the year is satisfied. However, a statutory exception to this rule states a plan does not fail to qualify as HSA-eligible by reason of providing preventive care benefits without a deductible, or with a deductible below the minimum annual deductible otherwise required for HDHPs.

Over the years, Treasury and IRS have provided guidance on what constitutes preventive care for purposes of HSA-eligible plans. Separately, the ACA included a requirement that non-grandfathered health plans cover certain preventive services without cost-sharing. In order to clarify how these different sets of rules fit together, Notice 2013-57 clarified that a health plan will not fail to qualify as a HDHP under section 223(c)(2) of the Internal Revenue Code (Code) because it provides, without a deductible, the preventive care services required under the ACA (*i.e.*, section 2713 of the Public Health Service Act (PHS Act)).

As you know, the U.S. District Court in the Northern District of Texas recently [issued](#) a ruling finding certain parts of the preventive services provision of the Affordable Care Act (ACA) to be unconstitutional (*i.e.*, the requirement that plans cover items and services recommended by the U.S. Preventive Services Task Force (USPSTF), with an A or B rating, without cost-sharing). Although the District Court has yet to issue a remedy, we have identified a question that is likely to arise if the court rules that health plans are no longer required to cover preventive services recommended by the USPSTF – specifically, whether HDHPs may continue to cover items and services recommended by the USPSTF pre-deductible, even if

no longer required to do so by the ACA. We would like to ensure any ruling in this case will not adversely impact the preventive services allowed to be covered on a pre-deductible basis by HSA-HDHPs. **We urge you to issue guidance that confirms a plan will not fail to be an HDHP solely because it covers, pre-deductible, items and services that have a recommendation of the USPSTF with an A or B rating. This is an extremely important issue given the proven benefits of preventive services for patients¹. We believe the statutory safe harbor under Section 223(c)(2)(C) allows preventive care, including those services that receive an A or B rating from the USPSTF and other high-value services listed in 2713 of the Public Health Service Act, to be offered by employers and health plans on a pre-deductible basis.**

More generally, we note that the Coalition worked tirelessly with the Department and the Service as you considered and finalized [Notice 2019-45](#), which provided additional flexibility for health plans and employers to cover certain chronic disease prevention drugs and services pre-deductible in HSA-eligible plans. Recent publications have shown an overwhelming, positive response to the guidance in the form of employers and health plans making changes to their plan designs to cover more high-value preventive services prior to meeting the plan deductible.

The 2021 AHIP and Smarter Health Care Coalition [survey](#) found that 75% of health insurance plans responding covered additional services pre-deductible in their fully insured products and 80% of plans covered additional services pre-deductible in their self-insured products². The 2021 Employee Benefit Research Institute (EBRI) [survey](#) of employers found three in four employers (76%) added pre-deductible coverage as a result of IRS Notice 2019-45. Pre-deductible coverage was often added for health care services related to heart disease and diabetes care³. Two-thirds added pre-deductible coverage for blood pressure monitors and insulin/glucose lowering agents, 61% added coverage for glucometers, and 54% added coverage for beta blockers. Nearly 80% of employers responding, stated that if permitted, they would expand pre-deductible coverage for additional preventive care services.

The findings highlight the high level of interest among health plans and employers to make it easier for their enrollees and employees to access high value preventive care services. [Studies have shown](#) that eliminating cost sharing boosts the use of preventive services, enhances equity, and saves lives. For example, following the implementation of the ACA requirement that Medicare cover colorectal cancer screenings without cost sharing, diagnoses of early-stage colorectal cancer increased 8% per year, [improving life expectancy](#) for thousands of seniors, according to a [2017 study](#) published in *Health Affairs*.

We urge you to continue this work to promote prevention and we request the Department and the IRS issue guidance as requested above. The Coalition requests a meeting to discuss this urgent matter.

The Department and IRS' actions gave millions of Americans enhanced access to life-enhancing medications and preventive care services via Notice 2019-45, likely improving patient outcomes and reducing health care disparities. We don't want to take any steps backward regarding chronic disease prevention or primary prevention. According to a report published by the Assistant Secretary for Planning and Evaluation, "recent data indicate that more than 150 million people with private insurance

¹ <https://aspe.hhs.gov/sites/default/files/documents/786fa55a84e7e3833961933124d70dd2/preventive-services-ib-2022.pdf>

² https://www.ahip.org/wp-content/uploads/202109-AHIP_HDHP-Survey-v03.pdf

³ https://www.ebri.org/docs/default-source/ebri-issue-brief/ebri_ib_542_hsaemployersur-14oct21.pdf?sfvrsn=73563b2f_6

– including 58 million women and 37 million children – currently can receive preventive services without cost-sharing under the ACA⁴.” **We urge you to continue to allow these high-value services to be provided pre-deductible in HSA-eligible plans, including issuing clear guidance that clarifies how this will be supported, and we look forward to discussing this matter with your staff.**

If you have any questions, please reach out to Katy Spangler, co-director of the Smarter Health Care Coalition. We look forward to working with you on this critical matter.

Sincerely,

Members of the Smarter Health Care Coalition:

American Academy of Family Physicians
American Benefits Council
American Osteopathic Association
JDRF
National Forum for Heart Disease & Stroke Prevention
Primary Care Collaborative
Public Sector HealthCare Roundtable
Purchaser Business Group on Health
University of Michigan Center for Value-Based Insurance Design
Virta Health

Allies of the Smarter Health Care Coalition:

ACA Consumer Advocacy
Blue Cross Blue Shield Association
Business Group on Health
Economic Alliance for Michigan
Employers' Advanced Cooperative on Healthcare
Florida Alliance for Healthcare Value
Greater Philadelphia Business Coalition on Health
Houston Business Coalition on Health
HR Policy Association
Kansas Business Group on Health
Lehigh Valley Business Coalition on Healthcare
MidAtlantic Business Group on Health
National Alliance of Healthcare Purchaser Coalitions
National Association of Benefits and Insurance Professionals
National Coordinating Committee for Multiemployer Plans (NCCMP)
New Jersey Health Care Quality Institute
North Carolina Business Group on Health
Partnership for Employer-Sponsored Coverage
Rhode Island Business group on Health
St. Louis Area Business Health Coalition
Tennessee Health Care Campaign

⁴ <https://aspe.hhs.gov/sites/default/files/documents/786fa55a84e7e3833961933124d70dd2/preventive-services-ib-2022.pdf>

The Alliance (Midwest)
The Leapfrog Group
The Society for Patient Centered Orthopedics
Washington Health Alliance
WellOK - The Oklahoma Business Coalition on Health

CC: Carol Weiser
Rachel Levy