

Jan. 3, 2023

Telehealth extension providing flexibility for HDHPs and HSAs is here! But be wary of gap for non-calendar year plans

On Dec. 29, 2022, Congress passed the 2023 omnibus spending bill which contains a two-year extension of the telehealth accommodation for high-deductible health plans (HDHPs). This means that telehealth services can be provided prior to the deductible of HDHPs being met without sacrificing eligibility for health savings accounts (HSAs). While this is welcome news, it should be noted that *non-calendar* year plans may experience a gap with regards to the availability of the flexibility, similar to what we saw in 2022 for calendar year plans.

Key Takeaways of Telehealth Interaction with HSAs

- Pre-2020, telehealth services offered before deductible jeopardized eligibility for HSAs.
- Due to COVID-19, by Congressional act, this rule was disregarded from Jan. 1, 2020 through the last day of the plan year beginning in 2021 (e.g., Dec. 31, 2021 for calendar year plans).
- In March of 2022, Congress extended this accommodation, however, only from April 1, 2022 through Dec. 31, 2022 (leaving a gap from Jan. 1, 2022 to March 31, 2022 for calendar year plans).
- This past December, Congress again extended this relief; however, instead of beginning on Jan. 1, 2023, it takes effect for plan years beginning after Dec. 31, 2022 (leaving a gap for non-calendar year plans from Jan. 1, 2023 until whenever the plan year begins).
- Non-calendar year plans will want to keep this in mind when considering offering telehealth services in conjunction with HSAs, although individuals eligible for HSAs as of Dec. 1 can fully fund their HSAs for the entire year if they remain eligible for the following 13 months.

Due to the pandemic, the Coronavirus Aid Relief and Economic Security (CARES) Act (2020) provided an accommodation for HDHPs to cover telehealth visits without meeting the deductible from Jan. 1, 2020 through the last day of the plan year beginning in 2021 (Dec. 31, 2021 for calendar year plans). Congress later extended the ability of HSA compatible HDHPs to pay for telehealth visits prior to the deductible being met without disqualifying individuals from making HSA contributions for the specific time period of April 1, 2022 to Dec. 31, 2022, (see our previous [alert](#)). This prior extension left a gap for *calendar* year plans from Jan. 1, 2022 to March 31, 2022.

Congress has once again extended this relief for **plan years beginning after Dec. 31, 2022 and before Jan. 1, 2025**, which in turn leaves a potential gap for *non-calendar* year plans from Jan.1, 2023 until the beginning of the plan year in 2023. For example, an HDHP with a plan year beginning June 1st would not qualify for relief allowing reduced or no-cost telehealth services prior to the deductible being met for the period from Jan. 1, 2023 until May 31, 2023 So while most non-calendar year plans did not experience a gap at the beginning of 2022, they will have a gap in 2023.

Lockton comment: For members who made contributions in the gap months when they should not have (Jan. 1 - May 31 in the example above) but are otherwise HSA-eligible on Dec. 1, there's a quirky rule that arguably comes to the rescue. As explained in a previous [alert](#), under this rule (called the "Dec. 1 rule"), if an HDHP enrollee is HSA-eligible on Dec. 1, the enrollee is deemed to have been HSA eligible for the entire calendar year as long as the enrollee remains HSA-eligible during the following 13 months. This rule arguably, at least as a practical matter, solves the "gap problem" for those HDHP enrollees under a non-calendar year plan who can take advantage of it. The ability of HDHPs to cover telehealth services prior to meeting the deductible is optional and employers may decide to apply this flexibility to their medical plans or require a deductible.

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