



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D. C. 20224

OFFICE OF THE CHIEF COUNSEL

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Attention:

Dear \_\_\_\_\_ :

I am responding to your letter dated April 02, 2021, addressed to Treasury Secretary Janet Yellen and IRS Commissioner Charles Rettig. You asked that we provide guidance that allows high-deductible health plans (HDHPs), as defined under Section 223(c)(2) of the Internal Revenue Code (Code), to include coverage for primary and behavioral health care visits before the minimum annual deductible has been satisfied.

Specifically, you note that based on \_\_\_\_\_, the guidance you requested is necessary for this provision to be operational. In addition, you asked the IRS to reconsider IRS Notice 2018-12, which provided that except for the transition relief provided in the notice for periods before 2020, male contraceptives are not considered to be preventive care for purposes of inclusion in an HDHP.

We recognize the importance of public input when preparing a Priority Guidance Plan that focuses resources on guidance items that are most important to taxpayers and tax administration. We will consider your letter as a submission for a guidance recommendation.

In addition, although we cannot reply to your specific request, we can provide you with the following general information.

As you may be aware, under Section 223(c) of the Code, an HDHP generally may not provide benefits to a participant for any year until the deductible for that year has been satisfied. However, Section 223(c)(2)(C) provides that an HDHP may provide preventive care benefits without a deductible (or with a deductible below the minimum annual deductible).

IRS Notice 2004-23 provides additional guidance about what is preventive care for purposes of Section 223(c)(2)(C). It states that periodic health evaluations, routine prenatal and well-child care, immunizations, and various screening services are preventive care and excludes “any service or benefit intended to treat an existing illness, injury, or condition.” It also clarifies that IRS guidance determines whether health care required by state law to be provided by an HDHP without regard to a deductible is “preventive” for purposes of the exception for preventive care under Section 223(c)(2)(C), rather than how that care is characterized by state law.

As you note, IRS Notice 2018-12 specifically excludes male contraceptives from the definition of preventive care for purposes of Section 223(c)(2)(C) except during the limited transition period provided in the notice. A health plan providing benefits for male sterilization or male contraceptives before satisfying the minimum deductible is not an HDHP.

I hope this information is helpful. If you have any additional questions, please contact me or \_\_\_\_\_ at \_\_\_\_\_.

Sincerely,

Denise Trujillo  
Branch Chief, Health and Welfare  
Office of Associate Chief Counsel  
(Employee Benefits, Exempt Organizations, and  
Employment Taxes)