



Published: December 28, 2022

Telehealth Relief for HSAs Extended in Last Minute Funding Package

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On December 23, 2022, the House passed a 4,155-page funding bill, the Consolidated Appropriations Act of 2023 (“CAA-23”), that includes a two-year extension on telehealth relief for high deductible health plans (“HDHPs”) offered with health savings accounts (“HSAs”). Included as a safe harbor, the bill provides that for plan years beginning after December 31, 2022 and before January 1, 2025:

- a plan shall not fail to be an HDHP if telehealth or other remote care services are offered before satisfaction of the minimum deductible; and
- coverage for telehealth or other remote care services is considered disregarded coverage for purposes of HSA eligibility.

The bill now goes to the President, who is expected to sign it into law.

Background

As background, the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) offered temporary relief related to telehealth and other remote care services when offered with an HDHP and HSA for plan years that began before December 31, 2021. The Consolidated Appropriations Act, 2022 (“CAA-22”) prospectively extended this relief, but only for the months of April through December 2022. Barring congressional action, the relief was set to expire December 31, 2022.

This latest extension under CAA-23 provides for two more years of relief based on the plan year’s start date. The relief is optional; employers are not required to offer free or reduced cost telehealth or other remote care services as part of their plan design.

Other Changes

The year-end funding bill also:

- Eliminates the opt-out opportunity for compliance with the Mental Health Parity and Addiction Equity Act (“MHPAEA”) for nonfederal governmental health plans; and
- Includes new grants for states to ensure compliance and enforcement of MHPAEA in the carrier market.

Employer Action

Employers with telemedicine (or other remote care services) and HSA-compatible HDHPs should consider whether to offer free (or reduced cost) services with their HDHPs for plan years beginning after December 31, 2022. It should be noted that employers with non-calendar year plans are not technically eligible for this new relief until the first plan year that begins after December 31, 2022. As such, free (or reduced cost) telehealth or other remote care services could be disqualifying coverage from January 1, 2023 to the day before the first day of the 2023 plan year. It is not clear whether this gap was intentional.

Employer should also communicate any changes to the telehealth or remote care benefits to participants as soon as possible.