



March 16, 2022

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

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Request for temporary, retrospective non-enforcement policy for pre-deductible telehealth and virtual care benefits in HSA-eligible plans.

Dear Secretary Yellen and Commissioner Rettig,

Business Group on Health appreciates the diligent and meaningful work from the Treasury Department and Internal Revenue Service to provide the tools with which employer plan sponsors can support their employees and families. Following the enactment of the FY 2022 Omnibus appropriations bill, we write to highlight an additional opportunity and urge the Department and Service to enable employers to cure a temporary anomaly in the coverage of telehealth and virtual care. ***We request that the Department and Service expressly adopt and issue a policy of non-enforcement for the period of January 1, 2022 through March 31, 2022 regarding telehealth and virtual care coverage and claim reimbursement provided under HSA-eligible plans that would otherwise disqualify the covered individual from contributing to an HSA.***

Business Group on Health represents a [network of more than 440 of today's largest and most progressive employers](#), including 74 Fortune 100 companies, providing health coverage for 60 million workers, retirees and their families in 200 countries. Business Group members – innovative employer plan sponsors – are leading the way and encouraging others by providing strong health plan offerings, adopting alternative payment models, managing the total cost of care, promoting health equity, furthering population health, and keeping people well.

Although plan design, coverage offerings, and the ability to make mid-year adjustments vary among employers and service providers, we believe many of our members would be interested in providing consistent support, even if retrospective, for their populations who have sought or wish to seek care through telehealth and virtual care. Business Group has consistently advocated for HSA-eligible plan improvements that include permitting first-dollar telehealth and virtual care coverage. Despite being after the fact, we believe many people and the administration of certain plans would benefit from permitting employers to bridge pre-deductible coverage from the end of the 2021 calendar year to the new statutory effective date of April 1, 2022.

The statutory allowance for pre-deductible telehealth coverage over the last two years has been an invaluable lifeline to many employees and families through the pandemic. We were disappointed when this permission expired at the end of 2021 and believe it had real-life negative consequences for American families in the first quarter of 2022. In most cases, we expect these consequences arose in two forms: (1) people had to pay out-of-pocket for services for which employer plans would have been willing to pay, thereby exacerbating financial challenges during this inflationary period; and/or (2) people discontinued, or did not begin to receive, telehealth or virtual care they needed and should have received.

Although a non-enforcement policy would not turn back the clock and allow people to start or continue care in the prior period, it would enable vital financial reimbursement for those who received care at their own expense. It also allows employers to signal their encouragement and support for people to stick with their course of treatment despite the unfortunate statutory volatility.

A valuable area of focus for consistent telehealth and virtual care has been mental health services. Based on recent surveys of our member companies, 93% of large employers provided virtual mental health services in 2021 with the majority of respondents waiving or reducing cost-sharing.ⁱ Treatment continuity in mental health services is important both for delivery of effective care and for maintaining or securing access to a provider. Mental health provider shortages and capacity challenges can cause significant delays or barriers to care. Telehealth appears to provide some meaningful improvement in the availability of care. We believe consistent (and even retrospective) financial support may help maintain such access and mitigate the risk of delayed care or the burden of seeking a new provider after stopping and restarting treatment.

Beyond mental health benefits, 85% of our large employer respondents believe virtual care will have a lasting impact on how health care is delivered in the future.ⁱⁱ And 80% indicated they support permanently allowing telehealth and virtual care to be covered

before the deductible is met for high deductible plans.ⁱⁱⁱ While we expect the permanent solution to permitting pre-deductible telehealth and virtual care likely to be legislative and require Congressional action, we believe the Department and Service are integral to the practical administration of plans and effective, equitable delivery of coverage and care. We view the Department and Service's potential exercise of enforcement discretion and adoption/issuance of a non-enforcement policy for the anomalous three-month period of January through March 2022 as important and appropriate to ensure and encourage consistent treatment, access to care, and plan administration.

Thank you for considering our request. We would welcome the opportunity to discuss these comments or any other matters impacting employer plan sponsors. Please feel free to contact me (kelsay@businessgrouphealth.org) or Garrett Hohimer, Director, Policy and Advocacy (hohimer@businessgrouphealth.org) to discuss further.

Sincerely,

Ellen Kelsay
President and CEO

ⁱ Business Group on Health, *2022 Large Employers' Health Care Strategy and Plan Design Survey*, August 2021.

ⁱⁱ *Id.*

ⁱⁱⁱ *Id.*