

**DESCRIPTION OF H.R. 4716,
THE “INHALER COVERAGE AND ACCESS NOW ACT OF 2019”**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on October 23, 2019

Prepared by the Staff
of the
JOINT COMMITTEE TAXATION



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INTRODUCTION

The House Committee on Ways and Means has scheduled on October 23, 2019, a committee markup of H.R. 4716, the “Inhaler Coverage and Access Now Act of 2019,” which provides that a high deductible health plan may provide certain inhalers, or related medicines or drugs delivered through such inhalers, without satisfaction of the minimum deductible. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 4716, the “Inhaler Coverage and Access Now Act of 2019,”* (JCX-45-19), October 21, 2019. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references herein are to the Internal Revenue Code of 1986, as amended, unless otherwise stated.

**A. Safe Harbor for High Deductible Health Plans
Without Deductible for Certain Inhalers**

Present Law

Health savings accounts

An individual may establish a health savings account (“HSA”) only if the individual is covered under a plan that meets the requirements for a high deductible health plan, as described below. In general, HSAs provide tax-favored treatment for current medical expenses as well as the ability to save on a tax-favored basis for future medical expenses. In general, an HSA is a tax-exempt trust or custodial account created exclusively to pay for the qualified medical expenses of the account holder and his or her spouse and dependents.

Within limits,² contributions to an HSA made by or on behalf of an eligible individual are deductible by the individual. Contributions to an HSA are excludible from income and employment taxes if made by the employer. Earnings in HSAs are not taxable. Distributions from an HSA for qualified medical expenses are not includible in gross income. Distributions from an HSA that are not used for qualified medical expenses are includible in gross income and are subject to an additional tax of 20 percent. The 20-percent additional tax does not apply if the distribution is made after death, disability, or the individual attains the age of Medicare eligibility (age 65).

High deductible health plans

A high deductible health plan is a health plan that has an annual deductible which is not less than \$1,350 (for 2019) for self-only coverage and twice this amount for family coverage, and for which the sum of the annual deductible and other annual out-of-pocket expenses (other than premiums) for covered benefits does not exceed \$6,750 (for 2019) for self-only coverage and twice this amount for family coverage.³ These dollar thresholds are subject to inflation adjustment, based on chained CPI.⁴

An individual who is covered under a high deductible health plan is eligible to establish an HSA, provided that while such individual is covered under the high deductible health plan, the individual is not covered under any health plan that (1) is not a high deductible health plan

² For 2019, the basic limit on annual contributions that can be made to an HSA is \$3,500 in the case of self-only coverage and \$7,000 in the case of family coverage. The basic annual contributions limits are increased by \$1,000 for individuals who have attained age 55 by the end of the taxable year (referred to as “catch-up” contributions).

³ Sec. 223(c)(2).

⁴ Sec. 223(g).

and (2) provides coverage for any benefit (subject to certain exceptions) covered under the high deductible health plan.⁵

Various types of coverage are disregarded for this purpose, including coverage of any benefit provided by permitted insurance, coverage (whether through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care, as well as certain limited coverage through health flexible savings accounts.⁶ Permitted insurance means insurance under which substantially all of the coverage provided relates to liabilities incurred under workers' compensation laws, tort liabilities, liabilities relating to ownership or use of property, or such other similar liabilities as specified by the Secretary under regulations. Permitted insurance also means insurance for a specified disease or illness, and insurance paying a fixed amount per day (or other period) of hospitalization.⁷

Under a safe harbor, a high deductible health plan is permitted to provide coverage for preventive care (within the meaning of section 1861 of the Social Security Act, except as otherwise provided by the Secretary) before satisfaction of the minimum deductible.⁸ IRS guidance describes the types of coverage that constitute preventive care for this purpose.⁹ More recently, Notice 2019-45¹⁰ provides an appendix with a limited list of preventive care services and items for certain chronic conditions that may be treated as preventive care, and provides that these services and items are treated as preventive only when prescribed to treat an individual diagnosed with the specified chronic condition, and only when prescribed for the purpose of preventing the exacerbation of the chronic condition or the development of a secondary condition. In connection with medicines or drugs delivered through inhalers, Notice 2019-45 limits as preventive care inhaled corticosteroids for individuals diagnosed with asthma; the Notice also permits as preventive care peak flow meters for such diagnosed individuals.

Description of Proposal

The proposal permits a high deductible health plan to provide inhalers for treatment of any chronic lung disease, or any medicine or drug which is delivered through such inhaler for treatment of such disease, without satisfaction of the plan's minimum deductible. Thus, under the proposal, a health plan will not fail to be treated as a high deductible health plan merely by reason of failing to require a deductible for such inhalers or such medicines and drugs, and an individual who is covered under such a plan may contribute to an HSA.

⁵ Sec. 223(c)(1).

⁶ Sec. 223(c)(1)(B).

⁷ Sec. 223(c)(3).

⁸ Sec. 223(c)(2)(C).

⁹ Notice 2004-23, 2004-15 I.R.B. 725 (April 12, 2004). See also Notice 2004-50, 2004-33 IRB 1 (Aug. 9, 2004); Notice 2008-59, 2008-29 I.R.B. 123 (July 21, 2008); Notice 2013-37, 2013-40 I.R.B. 293 (Sept. 30, 2013).

¹⁰ 2019-32 I.R.B. 593 (August 5, 2019).

Effective Date

The proposal applies to months beginning after the date of enactment.

B. Estimated Revenue Effect of the Proposal

Fiscal Years [Millions of Dollars]												
<u>Item</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2020-24</u>	<u>2020-29</u>
Safe Harbor for High Deductible Health Plans Without Deductible for Certain Inhalers [1]...	-35	-68	-98	-129	-146	-157	-177	-189	-197	-206	-476	-1,402

NOTE: Details may not add to totals due to rounding.

[1] Estimate includes the following budget effects:

	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2020-24</u>	<u>2020-29</u>
On-budget....	-27	-52	-76	-99	-113	-121	-139	-150	-156	-163	-367	-1,095
Off-budget...	-8	-16	-22	-30	-33	-36	-38	-39	-41	-43	-109	-307