

## Part III – Administrative, Procedural, and Miscellaneous

### Notice 2004-43

#### PURPOSE

This notice provides transition relief for individuals in states where high deductible health plans (HDHPs) as described in section 223(c)(2) are not available because state laws require health plans to provide certain benefits without regard to a deductible or below the minimum annual deductible of section 223(c)(2)(A)(i). The transition relief covers months before January 1, 2006, for state requirements in effect on January 1, 2004.

#### BACKGROUND

Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108-173, added section 223 to the Internal Revenue Code to permit eligible individuals to establish health savings accounts (HSAs) for taxable years beginning after December 31, 2003. An "eligible individual" under section 223(c)(1) must be covered by a "high deductible health plan" (HDHP). An HDHP under section 223(c)(2) must satisfy certain requirements with respect to minimum annual deductibles and maximum out-of-pocket expenses. However, section 223(c)(2)(C) permits a safe harbor for the absence of a preventive care deductible. An eligible individual may also have certain permitted insurance and permitted coverage under section 223(c)(1)(B).

Notice 2004-23, 2004-15 I.R.B. 725, describes a safe harbor for preventive care benefits that may be provided by an HDHP without a deductible or with a deductible below the minimum annual deductible for an HDHP. In addition, the notice indicates that whether health care required by state law without regard to a deductible is "preventive" will be based on the standards set forth in Notice 2004-23 and other guidance issued by the IRS, rather than on how the benefits are characterized by state law.

Several states currently require that health plans provide certain benefits without regard to a deductible or with a deductible below the minimum annual deductible requirements of section 223(c)(2) (e.g., first-dollar coverage or coverage with a low deductible). These health plans are not HDHPs under section 223(c)(2) and individuals covered under these health plans are not eligible to contribute to HSAs. Because of the short period between the enactment of HSAs and the effective date of section 223, these states have had insufficient time to modify their laws to conform to the standards of section 223. Thus, it is appropriate to provide transition relief that treats HDHPs as qualifying

under section 223(c)(2) when the sole reason the plans are not HDHPs is because of state-mandated benefits. During the transition period, otherwise eligible individuals covered under these plans will be treated as eligible individuals for purposes of section 223(c)(1) and may contribute to an HSA.

#### APPLICATION

For months before January 1, 2006, a health plan which would otherwise qualify as an HDHP under section 223(c)(2), except that it complies with state law requirements that certain benefits be provided without a deductible or below the minimum annual deductible of section 223(c)(2)(A)(i), will be treated as an HDHP for purposes of section 223(c)(2), if the disqualifying benefits are required by state law in effect on January 1, 2004.

#### DRAFTING INFORMATION

The principal author of this notice is Shoshanna Tanner of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Ms. Tanner on (202) 622-6080 (not a toll-free call).