

HSA Eligibility Unaffected by Insured HDHP First-Dollar Coverage of Male Sterilization (until 2020)

In recent years, several states have enacted laws requiring insured plans to cover male contraception, including, in some instances, male sterilization, as a preventive service without cost-sharing. Because male contraceptives are not considered preventive care under IRS rules, these laws could potentially affect the HSA eligibility of individuals covered under high-deductible health plans (HDHPs) subject to those mandates. The IRS recently provided transitional relief, until 2020, for individuals enrolled in plans that would otherwise qualify as HSA-compatible HDHPs except that they provide for coverage of male sterilization or male contraceptives before the deductible is satisfied. Accordingly, plan sponsors can rest assured until 2020 that individuals enrolled in their insured HDHPs will not lose HSA eligibility solely because the plans provide first-dollar coverage for male sterilization services under state law mandates.

Background

The Affordable Care Act requires non-grandfathered group health plans and health insurance issuers to provide in-network coverage for certain preventive services, including various contraception methods for women, without cost-sharing. (See our [August 7, 2015 For Your Information](#) to learn more about this requirement.) In recent years, some state legislatures ([Maryland](#), [Illinois](#), [Oregon](#) and [Vermont](#)) have addressed the issue of “gender equity” in contraceptive services coverage, enacting laws that require insurers to provide first-dollar coverage of male contraceptives and/or sterilization as a preventive service. Other states are considering similar legislation.

These types of state mandates, which do not apply to self-funded plans, can adversely affect an individual’s eligibility to establish or contribute to an HSA. This is because eligibility to contribute to an HSA requires an individual to be covered under a high-deductible health plan (HDHP) that pays no medical benefits other than for “preventive care services” until the minimum statutory annual deductible applicable to HSA-compatible group health plans is satisfied. Male sterilization is not recognized as a preventive care



service under IRS rules. (See our [February 16, 2018 *Legislate*](#) to learn about a proposal to expand the preventive care services category to include certain chronic disease management services.)

Vermont's law avoids the HSA eligibility issue by providing that the mandate to provide first-dollar coverage of voluntary sterilization procedures does not apply to the extent that the coverage would disqualify an HDHP from being HSA-compatible. However, neither the Maryland, Illinois, nor Oregon laws contain similar provisions. Aware of the issue, the Maryland Insurance Administration asked the IRS for clarification.

Transitional Relief

In [Notice 2018-12](#), the IRS affirmed that an HDHP that pays benefits for male sterilization or male contraceptives prior to satisfaction of the minimum statutory deductible is not HSA-compatible. However, it provided transitional relief for periods before 2020 for "individuals who are, have been, or become participants in or beneficiaries of a health insurance policy or arrangement that provides benefits for male sterilization or male contraceptives without a deductible, or with a deductible below the minimum deductible for an HDHP." For this transitional period, the IRS will not treat such an individual as being ineligible to contribute to an HSA merely because he or she is covered by a plan that, pursuant to state law, provides male sterilization or male contraceptive coverage before the individual has met the HDHP deductible.

Additionally, stating its continued consideration of "ways to expand the flexibility of HSAs and HDHPs," the IRS asked for comments on appropriate standards for differentiating between benefits and services that would and would not be considered preventive care.

Next Steps

The transitional relief gives states time to consider changes to these mandates in light of HSA eligibility requirements. It also gives carriers time to respond to any such changes.

In the meantime, plan sponsors now know that, until 2020, individuals enrolled in their insured HDHPs will not lose HSA eligibility solely because the plans provide first-dollar coverage for male contraceptives or sterilization services, as required by state law. They can use the transitional period to consider actions such as dropping insured HDHPs with first-dollar coverage of male contraceptives and moving to self-insured coverage.

In Closing

It remains to be seen if Congress or the IRS will act to expand the definition of preventive care for purposes of HSA/HDHP coverage.

Authors

Julia Zuckerman, JD
Leslye Laderman, JD, LLM

Produced by the Knowledge Resource Center of Conduent Human Resource Services

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