



# SPECIAL ALERT

## IRS GUIDANCE ON MALE CONTRACEPTIVE SERVICES COVERAGE AND HSAs

The Internal Revenue Service recently released IRS Notice 2018-12 dealing with certain state laws requiring health plans and policies to cover male contraceptive services (for example, condoms and vasectomies) without member cost sharing. These state requirements would disqualify some people from contributing to a Health Savings Account (HSA) as outlined below.

### REQUIREMENTS FOR AN INDIVIDUAL TO BE ELIGIBLE TO CONTRIBUTE TO A HEALTH SAVINGS ACCOUNT

Only those who meet specific requirements are eligible to contribute to an HSA. Two of these requirements are as follows:

1. They must be enrolled in a qualifying High Deductible Health Plan (HDHP)
2. They must not be enrolled in any disqualifying coverage that provides benefits until the minimum deductible (under the HDHP) is met for that year.

Except for the preventive care services the Affordable Care Act (ACA) requires, qualifying HDHPs cover services post-deductible. The Public Service Health Act and the United States Preventative Services Task Force specify qualified preventive services. They do not consider male sterilization and contraceptive services to be ACA preventive care services.

### HDHP COVERAGE AND STATE REQUIREMENT FOR MALE CONTRACEPTIVE SERVICES AND STERILIZATION AS A BENEFIT WITH NO COST SHARING

In cases where state law requires first dollar coverage of male contraceptive services, fully insured plans will automatically be disqualified HDHPs. This means, individuals covered by these non-qualifying HDHPs cannot contribute to HSAs. Maryland recently passed a law requiring all medical plans sold within that



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state to cover male contraceptives and sterilization services without cost sharing to the insured. This state law applies only to fully insured plans. Self-funded plans in the state can exclude first dollar coverage for male contraceptive services and maintain qualified HDHP status.

**TRANSITION RELIEF**

Currently, those enrolled in a health plan that would otherwise qualify as an HDHP (but for the inclusion of no cost sharing coverage for male contraceptives services) may continue to contribute to their HSAs until December



31, 2019. Thereafter, they cannot contribute to their HSAs if they continue to be enrolled in such coverage, unless the state relaxes the requirement or says it does not apply to HDHP coverage.

**ACTION REQUIRED**

For employers in Maryland (and other states that require male contraceptives and sterilization coverage at no cost to members), they need to monitor state law to ensure it has not changed. If the state law requires first dollar coverage of male contraceptive services, employers may want to reconsider offering fully insured HDHP plans written in that state in 2020. Check with your insurance

carrier to see if it is required to comply with the Maryland state law. At a minimum, employers should inform employees that state law may disqualify

them from contributing to an HSA beginning in 2020. MMA

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