Relief for HDHPs Required to Provide Male Contraceptives

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Certain state laws require insured medical plans to cover male sterilization or male contraceptives (jointly referred to here as "male contraceptives") before the minimum statutory high deductible health plan ("HDHP") deductible has been met. This would mean that the HDHP was not a qualifying HDHP (i.e., one necessary for health savings account ("HSA") eligibility). However, the IRS recently provided relief, preserving HSA eligibility before 2020.

Background

A qualifying HDHP is a health plan that has certain indexed amounts with respect to annual deductibles and out-of-pocket expenses. A qualifying HDHP provides "significant benefits" and does not reimburse medical expenses before a minimum deductible is met, subject to a few exceptions. One such exception is for preventive care. "Preventive care" is defined federally and does not include male contraceptives. This is an issue because at least four states have enacted laws requiring insurers to cover male contraceptives without cost-sharing:

- Illinois requires insured plans to cover voluntary sterilization procedures without cost-sharing.
- Maryland requires insurers to provide coverage for male sterilization without any copay, coinsurance, or deductible with respect to all non-grandfathered plans.
- Oregon requires coverage of sterilization without cost-sharing effective with the 2019 renewal date.
- Vermont has a rule like those above except to the extent it would disqualify an HDHP from being a qualifying HDHP.

Relief

On March 5, 2018, the IRS issued Notice 2018-12 which provides transition relief until 2020 for individuals who are covered under a health insurance policy that provides male contraceptives before the statutory deductible is met if the only reason for HSA-ineligibility is due to the required pre-deductible male contraceptive coverage. This transition relief is put in place to give states a chance to change their laws, perhaps by following Vermont's lead and carving out qualifying HDHPs from any male contraceptives mandate. This does not affect self-funded plans.