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IRS Provides Transition Relief for Certain HDHP Preventive Care Issues

Questions have arisen recently as to various state mandated preventive care requirements and whether such requirements violate the HDHP preventive care rules. As background, to be eligible to contribute to an HSA, an individual must be enrolled in a high deductible health plan (HDHP) that satisfies the requirements of Internal Revenue Code Section 223 (and not have other disqualifying coverage). One of these requirements is that the HDHP cannot provide benefits, other than preventive care (as defined for purposes of Code Section 223), until the participant satisfies the minimum annual deductible.

Certain states have recently adopted laws requiring insured HDHP policies to provide benefits for male sterilization or male contraceptives without cost sharing (or minimal cost sharing). If these services do not qualify as preventive care for purposes of Code Section 223, individuals covered by these policies would not be eligible to contribute to a health savings account because they would not be covered under a qualifying HDHP. In IRS Notice 2018-12, the IRS has made clear that these services do not qualify as preventive care for Code Section 223 purposes, even if they are provided due to state insurance law requirements. This means that, absent relief, individuals covered by these policies are not eligible to contribute to an HSA.

To not penalize individuals with policies issued in compliance with these state laws, the Notice provides transition relief retroactively and until 2020. Until 2020, individuals with coverage under an HDHP that provides benefits for male contraceptives and/or male sterilization prior to satisfying the minimum HDHP deductible will not be treated as ineligible for an HSA solely as a result of such coverage. Interestingly, the Notice does not limit the relief to insured plans or to policies issued in states that require this coverage to be provided.

The Notice also requests public comments on whether the above benefits should be considered to be preventive care and what the appropriate standards should be for preventive care in general.