



COMPLIANCE BULLETIN

HIGHLIGHTS

- Some states require health insurance policies to cover male sterilization or contraceptives without a deductible.
- According to the IRS, this coverage will disqualify an individual from being HSA-eligible.
- As transition relief, for periods before 2020, this coverage alone will not make an individual ineligible for HSA contributions.

TRANSITION RELIEF

Periods Before 2020

Before 2020, individuals who are enrolled in HDHPs that provide benefits for male sterilization or contraception without a deductible will still be considered HSA-eligible.

Provided By:
New England Employee
Benefits Co., Inc.

IRS Addresses Impact of Male Sterilization Coverage on HSA Eligibility

OVERVIEW

On March 5, 2018, the IRS issued [Notice 2018-12](#) to address whether individuals are eligible for health savings account (HSA) contributions if they are covered under health plans that provide benefits for male sterilization or male contraceptives without a deductible. At least four states—Illinois, Maryland, Oregon and Vermont—have laws requiring health insurance policies to cover these benefits without a deductible.

According to the IRS, because these benefits are not for preventive care, individuals who are covered under these health plans are ineligible for HSA contributions. However, the IRS provided **transition relief for periods before 2020**. During this time, individuals will not be ineligible for HSA contributions merely because their health plan covers male sterilization or male contraceptives without a deductible.

ACTION STEPS

For periods before 2020, employers with high deductible health plans (HDHPs) that cover male sterilization or male contraceptives without a deductible may allow eligible employees to make pre-tax HSA contributions.



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HSA Eligibility Requirements

To be eligible for HSA contributions, an individual must:

- ✓ Be covered by an HDHP;
- ✓ Not be covered by other health coverage that is not an HDHP (with certain exceptions);
- ✓ Not be enrolled in Medicare; and
- ✓ Not be eligible to be claimed as a dependent on another person's tax return.

According to the IRS, a health plan that covers male sterilization or contraception without a deductible is not an HDHP. Thus, subject to the IRS' transition relief for periods before 2020, this type of coverage will make an individual ineligible for HSA contributions.

To qualify as an HDHP, a health plan cannot pay benefits until the required minimum deductible has been satisfied—with the exception of **preventive care benefits**. An HDHP may apply a low deductible (or no deductible) to its coverage of preventive care.

Type of HDHP Coverage	Minimum Annual Deductible
Self-only	\$1,350
Family	\$2,700

Preventive Care Benefits

The IRS determines the scope of preventive care benefits that an HDHP may provide before the minimum deductible has been met. For example, the IRS has determined that preventive care includes annual physicals, routine prenatal and well-child care, immunizations, and screening devices and tests, such as cancer screenings. Preventive care, however, does not generally include any service or benefit intended to treat an existing illness, injury or condition.

Impact of State Insurance Mandates

State insurance laws may require health insurance policies to provide certain health care benefits without a deductible or subject to a deductible that is lower than the HDHP-required minimum deductible. State law may even characterize the benefits as preventive care. However, for HSA purposes, only the IRS determines whether a type of benefit qualifies as preventive care. If a health plan covers a non-preventive care service before the deductible is satisfied, it will not qualify as an HDHP under the HSA rules.

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In addition, the Affordable Care Act (ACA) requires non-grandfathered group health plans to provide coverage for preventive care on a “first-dollar basis” (that is, without any copayments, deductibles or other cost sharing). According to the IRS, any health care benefit that is treated as preventive care under the ACA also qualifies as preventive care under the HSA rules.

The preventive care guidelines under the ACA include contraceptive methods, sterilization procedures and patient education for women. The guidelines, however, do not include benefits or services relating to a man’s reproductive capacity, such as sterilization or contraceptives.

Insurance Mandates

At least four states have laws that require health insurance policies to provide benefits for male sterilization or contraceptives without cost sharing.

State	Insurance Mandate
Illinois	Illinois requires health insurance policies, issued after Jan. 1, 2017, to provide coverage for all contraceptive drugs, devices and other products approved by the U.S. Food and Drug Administration (FDA), excluding male condoms. Policies must also cover voluntary sterilization procedures, including vasectomies. Policies cannot impose a deductible, coinsurance, copayment or any other cost-sharing requirement on these benefits. 215 I.L.C.S. 5/356z.4
Maryland	Effective Jan. 1, 2018, health insurance policies must cover male sterilization without imposing a deductible, coinsurance or copayment on the coverage. Md. Code Ann., Insurance § 15-826.2
Oregon	Effective Jan. 1, 2019, the Reproductive Health Equity Act (HB 3391) requires health insurance policies to cover voluntary sterilization, such as vasectomies, without cost sharing.
Vermont	Effective Oct. 1, 2016, health insurance plans must provide coverage for voluntary sterilization procedures for men and women without any deductible, coinsurance or copayment, except to the extent that this coverage would disqualify a health plan from being an HDHP under the HSA rules. 8 V.S.A. § 4099c

IRS Ruling – Notice 2018-12

General Guidance

IRS Notice 2018-12 provides that, under current guidance, a health plan that provides benefits for male sterilization or male contraceptives before satisfying the minimum deductible for HDHPs does not constitute

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an HDHP, *regardless of whether the coverage is required by state law*. An individual who is not covered by an HDHP is not eligible to make HSA contributions (or have them made on his or her behalf).

Transition Relief

The IRS provided transition relief for periods before 2020 (including periods prior to the issuance of Notice 2018-12) to individuals who are enrolled in health insurance policies that provide benefits for male sterilization or male contraception without a deductible, or with a deductible that is lower than the HDHP-required minimum deductible. These individuals will still be considered HSA-eligible, provided they satisfy the other requirements for HSA eligibility.

The IRS' transition relief is intended to give states enough time to change their health insurance laws that require coverage for male sterilization or male contraceptives without a deductible. The IRS is also requesting comments on the appropriate standards for preventive care under the HSA rules.