

How to Avoid HSA Conflicts with State First-Dollar Coverage Mandates

Over the past decade, high deductible health plans (HDHPs) have become the fastest growing product in the insurance market. Many, but not all, HDHPs make enrollees eligible to participate in a Health Savings Account (HSA). “HSA-qualified” HDHPs must meet certain requirements, most notably that the plan deductible must apply to all covered benefits (including prescription drugs) received from in-network medical providers. The only exception is for “preventive care services” as defined by the Internal Revenue Service (see [IRS Notice 2004-23](#)).

In the earliest days of HSAs, the IRS provided a transition period for states to modify their insurance laws to allow HSA-qualified HDHPs to exist. This frequently involved permitting exemptions from first-dollar coverage mandates for HSA-qualified HDHPs so that no conflicts between federal and state law existed. But in the past few years, some states have begun to create conflicts (knowingly or not) that have raised questions about whether HSA-qualified plans can continue to exist in these states.

The most prominent conflict involves first-dollar coverage mandates for male sterilization benefits. Several states (e.g., Illinois, Maryland, Oregon, Vermont) have recently enacted laws requiring fully-insured plans¹ issued within their borders to cover male sterilization benefits without application of the plan deductible, copays or coinsurance. Although these laws attempt to provide coverage parity for contraceptive services provided to males as is enjoyed by females under the Affordable Care Act, the laws go beyond a clear understanding of what the IRS considers “preventive care services” that could be exempt from the deductible.

The Vermont legislature provided a viable solution to this problem by including language² that exempts HSA-qualified HDHPs from having to meet the first-dollar coverage requirement for male sterilization benefits so that the plans can maintain their HSA-qualified status. Fully-insured HSA-qualified HDHPs must still cover male sterilization benefits but are permitted to apply the deductible to such benefits.

Other states may be interested in imposing other first-dollar coverage mandates for services where it is more obvious or even less clear than male sterilization that the services would qualify for the “preventive care services” exception under IRS guidance. Since it is unknown whether (and when) the IRS might issue further guidance on these matters, we believe the most prudent path is for states to include language similar to that in Vermont whereby any first-dollar coverage mandates recognize the need to grant an exception for HSA-qualified HDHPs so that state residents may continue to participate in HSAs.

¹ Including plans purchased directly from the insurance carrier, through the state health insurance exchange, or through the individual’s employer but not including a self-insured plan sponsored by the employer)

² “(d) A health insurance plan shall provide coverage for voluntary sterilization procedures for men and women without any deductible, coinsurance, co-payment, or other cost-sharing requirement, *except to the extent that such coverage would disqualify a high-deductible health plan from eligibility for a health savings account pursuant to 26 U.S.C. § 223*”(emphasis added); 8 V.S.A. §4099c

Providing these exceptions will allow state residents and their employer to continue to make contributions to their HSAs in the coming years.

If any state is uncertain about whether a particular legislative or regulatory initiative could cause a conflict for HSA account owners, please contact Kevin McKechnie, Executive Director of the American Bankers Association HSA Council at kmckechn@aba.com or 1-800 BANKERS (800-226-5377) so the text of the bill or rule may be reviewed prior to consideration/adoption.