

THE BEACON

Exclusive Compliance Alerts from MZQ Consulting

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WHAT'S ALL THE FUSS ABOUT VASECTOMIES IN MARYLAND?

The Maryland Contraceptive Equity Act (MCEA) goes into effect on January 1, 2018. Under the new insurance law, male sterilization is deemed to be “preventive care”, meaning vasectomies must be made “free” to all individuals covered by a fully insured policy issued in Maryland.

WHAT IS THE PROBLEM?

Under federal guidelines, in order for a health plan to be considered HSA-compatible, it must qualify as a “high deductible health plan” or HDHP. To be considered a HDHP, a plan must apply a deductible towards all benefits unless those benefits are deemed to be for “preventive care” as defined by the IRS.

Unfortunately, the IRS definition of “preventive care” and the Maryland definition are not coordinated. Unlike female contraception, male contraception is not mandated by the ACA under preventive care. This has thrown into question whether any fully insured health plan offered in Maryland after January 1, 2018 will be HSA-eligible.

Given this circumstance, the Maryland Insurance Administration advised the IRS of the requirements under MCEA and requested guidance in May 2017. The IRS has not yet responded.

DOES THIS MEAN MARYLANDERS CAN NO LONGER PARTICIPATE IN HSAS?!!

As January 1 approaches, employers intending to offer HSA-compatible HDHPs find themselves in a tricky situation. Insurers offering these plans have issued warnings that the plans may not meet the IRS requirements. Should employers do the same?

There are no good answers to this question, and

unfortunately, it is one being faced by many Maryland employers at this moment. When navigating this decision, employers should take into account the following:

- Technically, there is a strong argument that the addition of first dollar coverage for vasectomies in Maryland means that the plans can no longer meet IRS standards for HDHPs.
- It's unlikely that the IRS will disqualify all HSAs offered in the state based on compliance with a state mandate.

GREAT, BUT WHAT SHOULD WE DO NOW?

The best resolution would be for the Maryland General Assembly to issue a legislative fix. Employers should be raising this issue and asking for help.

Beyond that, the decision of what to do rests in the hands of the employer plan sponsor. HSA eligibility is ultimately an individual-level (rather than employer-level responsibility)—but, employees will be looking to their employers for guidance. Further, offering an HSA looks and feels like an endorsement from the employer that the HDHP is HSA-eligible.

We can't provide an answer on this one—but we can say that most employers are electing to maintain the status quo pending additional guidance.

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