Contraceptive Equity & High-Deductible Health Plans

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Contraceptive Equity laws require coverage of all unique contraceptives without inappropriate medical management. This fact sheet is part of a series of primers on health law issues that may arise when advocating for state Contraceptive Equity laws. To access additional primers, visit https://healthlaw.org/contraceptive-equity-primers.

High-deductible health plans (HDHPs) present unique issues for contraceptive coverage because of their interaction with tax law. A consumer with a HDHP in conjunction with a tax-exempt Health Savings Account (HSA) must meet the deductible before receiving any benefits in order to legally contribute to the HSA. This potentially conflicts with Contraceptive Equity laws that prohibit cost-sharing.

Federal law explicitly provides an exemption or "safe harbor" to allow HDHPs to cover preventive services before a patient meets the minimum deductible requirements.[1] IRS guidance from 2013 clarified that all of the FDA-approved contraceptives for women, including women's sterilization, are considered preventive services for tax purposes because of the women's preventive services amendment in the Affordable Care Act (ACA).[2] Thus, contraceptives for women are covered in HDHPs without meeting the deductible.

However, in March 2018, the IRS issued additional guidance stating that because the ACA did not include a men's preventive services amendment, male sterilization and male contraceptives are not considered preventive in the context of HSAs.[3] This conclusion is unfortunate given the

[1] 26 USC § 223(c)(2).
[2] I.R.S. Notice 2013-57, https://www.irs.gov/pub/irs-drop/n-13-57.pdf.
[3] I.R.S. Notice 2018-12, https://www.irs.gov/pub/irs-drop/n-18-12.pdf.

current STI crisis and the myriad public health arguments for classifying all contraception as preventive.[4]

Given this directive, Contraceptive Equity laws fully cover external condoms and vasectomies without cost sharing in HDHPs once the consumer's annual deductible requirements are met.[5] This approach complies with the administration's current interpretation of federal tax law, but does not foreclose the ability of the no cost-sharing provision to kick-in for HDHPs in the case that a future administration makes a determination that male contraception is preventive. In addition, if the US Preventive Services Task Force (USPSTF) issues an A or B rating for male contraception, coverage would be mandated under the ACA.

[4] See Adam Sonfield, *Rounding Out the Contraceptive Coverage Guarantee: Why 'Male' Contraceptive Methods Matter for Everyone*, 18 GUTTMACHER POL'Y REV. 34 (2015), https://www.guttmacher.org/gpr/2015/06/rounding-out-contraceptive-coverage-guarantee-why-male-contraceptive-methods-matter; U.S. AGENCY FOR INT'L DEV., CONDOM USE: HOW IT RELATES TO HIV AND STI PREVENTION (Sept. 2013), https://www.usaid.gov/sites/default/files/documents/1864/CondomSTIIssueBrief.pdf; J. Trussell, et al., *The Economic Value of Contraception: A Comparison of 15 Methods*, 85 AM. J. PUB. HEALTH 494 (1995), https://www.ncbi.nlm.nih.gov/pubmed/7702112/; Andrew S. Ferber, et al., *Men with Vasectomies: A Study of Medical, Sexual, and Psychosocial Changes*, 29 PSYCHOSOMATIC MED. 354, 359-62 (1967).

[5] For additional considerations regarding male contraceptive coverage, see the primer *Contraceptive Equity & Essential Health Benefits*, https://healthlaw.org/contraceptive-equity-primers.