Segal Consulting

update

Public Sector Benefits Compliance News

March 13, 2018

New IRS Guidance on HSAs and Adoption Assistance

In March 2018 the Internal Revenue Service (IRS) published two important notices regarding Health Savings Accounts (HSAs), adoption assistance and HSA-qualified High-Deductible Health Plans (HDHPs):

- Revenue Procedure 2018-18[1] published an updated lower HSA contribution limit for family coverage in 2018 and lower adoption expense limits, to reflect changes made in the Tax Cuts and Jobs Act.[2]
- Notice 2018-12[3] announced that a health plan that covers male contraceptives or male sterilization before the deductible is met cannot be an HSA-qualified HDHP, but provided transition relief before 2020.

This *Update* discusses the two notices and implications for plan sponsors.

HSA Contribution Limits for 2018 Lowered

In Revenue Procedure 2018-18, the IRS lowered the annual maximum contribution limit for an individual enrolled in family coverage to $6,850, effective January 1, 2018. The limit had previously been set at $6,900. However, the new Tax Act changed the measure of inflation adjustments to the Chained Consumer Price Index for All Urban Consumers (C-CPI-U), effective in 2018. Consequently, the IRS recalculated the inflation adjustment for HSAs and adjusted the family contribution limit.

All other HSA and HDHP limits remain the same. In addition, the ability of individuals who are age 55 and older to make a catch-up contribution remains unchanged.

Individuals who have elected coverage under an HSA/HDHP plan option need to take the new limit into account for 2018 contributions to their HSA account. Plan sponsors that offer HSA/HDHP options and permit employees to make HSA contributions through their Section 125 plan should consider notifying employees of the new limit and reminding them to adjust their elections accordingly.

Health Compliance News Highlights:

- The IRS has lowered the maximum HSA contribution limit for family coverage for 2018, from $6,900 to $6,850.
- The maximum amount that can be excluded from gross income for adoption expenses has been reduced from $13,840 to $13,810 per child.
- The IRS has concluded that HSA-qualified HDHPs cannot pay for male contraception and sterilization methods before the plan's deductible is met.
- Both announcements require attention by plan sponsors that offer HSA-qualified HDHPs.

NEW! On April 26, 2018 in Revenue Procedure 2018-27, the IRS reverted back to the $6,900 maximum family contribution in response to requests it received from plan sponsors.

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[1] Revenue Procedure 2018-18 is in Internal Revenue Bulletin 2018-10.

[2] See Segal Consulting's January 19, 2018 *Update* on that law, "Benefits and Related Provisions in the New Tax Law."

[3] Notice 2018-12 is available in the IRS website.

Adoption Assistance Limit Lowered

Adoption assistance expense limitations were also lowered because of C-CPI-U. For taxable years beginning in 2018, the maximum amount that can be excluded from gross income for adoption expenses has been reduced from $13,840 to $13,810 per child. The amount excludable phases out for taxpayers with income over $207,140 and is completely phased out at $247,140 or more.

HDHPs Cannot Cover Male Sterilization/Contraception Before Deductible Is Met

The IRS published Notice 2018-12 to answer questions about coverage of male sterilization and male contraception in an HSA-qualified HDHP. In general, an HSA-qualified HDHP may not pay for health benefits until the covered individual has met his or her deductible. However, certain preventive care benefits may be covered before meeting the deductible, including any item that is a preventive service under the Affordable Care Act's rules for non-grandfathered plans. That definition covers preventive services recommended with an A or B rating by the United States Preventive Services Task Force, services recommended for children under the Bright Futures program and women's preventive services recommended by the Health Resources and Services Administration (HRSA). HRSA guidelines recommend coverage for contraceptive services for women. The agencies responsible for administration of the Affordable Care Act have previously issued guidance that all FDA-approved contraceptive methods for women must be covered in-network (without cost sharing or deductibles) for non-grandfathered plans, but male contraceptives and sterilization are not required preventive benefits.

The IRS stated in Notice 2018-12 that a health plan that provides benefits for male sterilization or male contraceptives before satisfying the minimum deductible for an HDHP does not constitute an HDHP. Notice 2018-12 provides a transition period until 2020.

Several states, including Illinois, Maryland and Vermont, have enacted state insurance laws that require insured plans to cover male sterilization and contraception as a preventive benefit, without copayments or deductibles. The IRS states that if these laws apply, the insured plans that comply with them would not be considered an HSA-qualified HDHP.

In states that require coverage of male contraception and sterilization, the IRS notes that residents of these states may be unable to purchase health insurance coverage that qualifies as an HDHP, and would be unable to deduct contributions to an HSA, unless the state changes the law prior to 2020.

Implications for Plan Sponsors

Plan sponsors that offer HSA-qualified HDHPs should inform their employees, members and administrators about the reduction in the HSA family maximum contribution and take appropriate steps to limit the amount. Plan sponsors that support adoption assistance should inform their employees, members and administrators about the reduction in these allowable amounts, as well.

If an employer, plan or individual made the full 2018 HSA contribution before the IRS Notice was published, they should discuss curative action with their HSA administrator to assure that they are not required to pay an excise tax for exceeding the maximum contribution level.

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Plan sponsors with a self-insured HSA-qualified HDHP that consider male sterilization and male contraception a preventive benefit must change their plans no later than 2020 to assure that these benefits are not payable before the deductible has been met. The transition period ends at the beginning of 2020 regardless of the plan year, so plans with mid-year plan years should revise their benefits beginning in the 2019 plan year. Plan sponsors with an insured HSA-qualified HDHP should monitor changes in state laws.

How Segal Can Help

Segal works with plan sponsors and their legal counsel on compliance issues. Segal can review the HDHP's coverage of preventive care benefits to make sure the coverage complies with existing IRS guidance, review and amend plan documents, and draft notices informing employees of changes in permissible benefits.

Questions?

For more information about how this new IRS guidance may affect your plan, please contact your Segal consultant or the Segal office nearest you.

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