GROOM LAW GROUP

Publications

IRS Issues Immediately Effective HSA Guidance

ATTORNEYS & PROFESSIONALS

Kathryn Bjornstad Amin
kamin@groom.com
202-861-2604

Christine Keller
ckeller@groom.com
202-861-9371

PUBLISHED

03/07/2018

SERVICES

Employers & Sponsors

Health & Welfare Programs

On March 5, 2018, the Internal Revenue Service ("IRS") issued two pieces of guidance regarding health savings accounts ("HSAs"). The first piece of guidance provides a new, lower, HSA contribution limit for 2018. The second piece of guidance provides much-needed transition relief for HSA owners enrolled in fully-insured high-deductible health plans ("HDHPs") that provide male sterilization services without cost-sharing.

2018 HSA Contribution Limits

Effective beginning in 2018, the Tax Cuts and Jobs Act (H.R. 1) ("Act") changed the indexing for certain dollar thresholds in the Internal Revenue Code ("Code"), including HSA contribution limits, from the consumer price index ("CPI-U") to Chained CPI-U. This change in indexing was expected to cause the thresholds to increase at a slower rate over time. Because the IRS had already announced the 2018 HSA limits prior to enactment of the Act, and employees and employers had set contributions accordingly, it was unclear whether the IRS would change the thresholds for 2018. The IRS answered that question in a surprising way in Revenue Procedure 2018-18, which lowers the 2018 maximum HSA contribution for individuals with family HDHP coverage by $50 – from $6,900 to $6,850. The IRS did not change the 2018 contribution limit for individuals with individual HDHP coverage, however – that amount remains at $3,450.

Notably, the IRS did not release revised health FSA contribution limits, so that amount remains at $2,650. We expect to hear from the IRS shortly about whether or not health FSA limits will change for 2018.

Groom Comment

Employees who have elected to contribute the full $6,900 amount will need to decrease their elections to $6,850. Not reducing the election amount has the potential to subject employees and employers to penalties. To avoid penalties, any employees who already contributed the maximum $6,900 prior to March 5 will need to withdraw their excess contributions (including interest on the excess contributions) as taxable income. It does not appear that employers need to treat the excess contributions as taxable wages for W-2 purposes, however, because the employer presumably had a reasonable belief at the time of the contribution (prior to March 5) that the contribution was excludable from wages. Further guidance from the IRS on this point would be helpful.

For employees who have not yet contributed the maximum $6,900, it appears that employers can automatically reduce the employees' elections to the new maximum amount (indeed, this may be required to meet the "reasonable belief" requirement).

Transition Relief for HSAs and Male Sterilization without Cost Sharing

The IRS also released Notice 2018-12, Notice of Transition Relief Regarding the Application of Section 223 to Certain Health Plans Providing Benefits for Male Sterilization or Male Contraceptives ("Notice").

Several states, including Maryland, require some sort of gender parity for insured health plans. Since the Affordable Care Act requires that sterilization and contraception for women be provided without cost-sharing, in these states male sterilization and contraception must be covered without cost-sharing as well.

Code section 223(c)(2)(C), which contains the definition for HSA compatible HDHPs, allows a health plan to be treated as a qualifying HDHP even if it fails to have a deductible for preventive care. Since passage of the Affordable Care Act, sterilization and contraception for women is preventive care for these purposes. Prior to the issuance of the Notice, however, it was unclear whether male sterilization would be considered preventive care because it is generally not preventive care under the Affordable Care Act. Unfortunately, the Notice expressly states that male sterilization is not considered preventive care for purposes of Code section 223, and, therefore, a plan must have a deductible for these services to be considered an HSA-compatible HDHP.

For periods prior to 2020, including periods before issuance of the Notice, the IRS provides transition relief for HSA owners enrolled in fully-insured HDHPs that provide male sterilization and contraception services without cost-sharing. Under this transition relief, HSA owners will still be considered eligible individuals able to contribute to their HSAs in 2018 and 2019, even if their HDHP covers male sterilization on a pre-deductible basis. This transition period is intended to allow states to make any necessary legislative changes to benefit requirements before January 1, 2020.

The IRS requests comment regarding the provisions in the Notice, but did not provide a deadline for comments.

Groom Comment

This an important piece of guidance from the IRS that may have spillover effects on future determinations of what is considered preventive services for purposes of Code section 223. Notice 2018-12 presents issuers, employers, and other stakeholders with an opportunity to comment on the IRS's determination that male sterilization is not a preventive service.

IRS_Issues_Immediately_Effective_HSA_GuidanceDownload