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MARYLAND
INSURANCE
ADMINISTRATION

AL REDMER, JR.
Commissioner

NANCY GRODIN
Deputy Commissioner

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202
Phone: 410-468-2340 Fax: 410-468-2307
1-800-492-6116 TTY: 1-800-735-2258
www.insurance.maryland.gov

May 31, 2017

Mr. Tom West
Assistant Secretary (Tax Policy)
Department of the Treasury
1500 Pennsylvania Ave., NW, Room 3120
Washington, DC 20220

Dear Assistant Secretary West:

In 2016, the Maryland General Assembly passed the State's Contraceptive Equity Act to prevent discrimination in insurance coverage for male and female contraception.[1] That law, which adds to §§ 15-826.1 and 15-826.2 of the Insurance Article, Annotated Code of Maryland, is set to become effective on January 1, 2018, and requires health benefit plans to provide coverage for male sterilization without applying a copayment, coinsurance requirement, or deductible.

The Maryland Insurance Administration ("MIA") seeks confirmation that the state requirement to provide coverage for male sterilization without a deductible does not impact an individual consumer or any employer's ability to make tax favored contributions to an individual's Health Savings Account ("HSA") if the individual is covered under a High Deductible Health Plan ("HDHP"). More specifically, the MIA seeks to clarify that male sterilization is "preventive care" for purposes of the safe harbor for preventive care allowed under Section 223(c)(2) of the Internal Revenue Code. IRS Notice 2004-23 states the following regarding the safe harbor for preventive care:

> Among the requirements for an individual to qualify as an eligible individual under Section 223(c)(1) (and thus to be eligible to make tax-favored contributions to an HSA) is the requirement that the individual be covered under an HDHP. An HDHP is a health plan that satisfies certain requirements with respect to minimum deductibles and maximum out-of-pocket expenses. However, Section 223(c)(2)(C) provides a safe harbor for the absence of a preventive care deductible. That section states, "[a] plan shall not fail to be treated as a high deductible health plan by reason of failing to have a deductible for preventive care (within the meaning of Section 1871 of the Social Security Act,

[1] House Bill 1005, "Health Insurance-Contraceptive Equity Act" (Chapter 437, Laws of Maryland 2016). Available online: http://mgaleg.maryland.gov/2016RS/Chapters_noln/CH_437_hb1005t.pdf.

except as otherwise provided by the Secretary)." An HDHP may therefore provide preventive care benefits without a deductible or with a deductible below the minimum annual deductible.

PREVENTIVE CARE SAFE HARBOR

IRS Notice 2004-23 goes on to state that for purposes of Section 223(c)(2)(C), preventative care includes, but is not limited to, the following:

- Periodic health evaluations, including tests and diagnostic procedures ordered in connection with routine examinations, such as annual physicals.
- Routine prenatal and well-child care.
- Child and adult immunizations.
- Tobacco cessation programs.
- Obesity weight-loss programs.
- Screening services (see attached APPENDIX).

However, preventive care does not generally include any service or benefit intended to treat an existing illness, injury, or condition.

The IRS has not expressly stated that male sterilization procedures, including vasectomies, are considered preventive for purposes of Section 223(c)(2). However, IRS Notice 2004-23 states that "preventative care" is not limited to those items expressly enumerated in the list contained in that bulletin. The MIA requests clarification on whether male sterilization procedures such as vasectomy, performed to prevent unwanted pregnancy, are considered preventive for purposes of Section 223(c)(2)(C) of the Internal Revenue Code and the Preventive Care Safe Harbor discussed in IRS Notice 2004-23.

The MIA is asking for the IRS's assistance to ensure State residents and employers do not unintentionally find themselves out of compliance with state law or federal tax law. Due to the effective date of the Maryland Contraceptive Equity Act, we are requesting your response prior to July 1, 2017 in order to permit adequate to time to notify both policyholders and insurers of the IRS advice and for any resulting adjustments that may be needed at the State level.

Please advise.

Sincerely,

Alfred W. Redmer Jr.
Insurance Commissioner

cc: Rob Neis, Esq.
Office of the Tax Legislative Counsel
Department of the Treasury
1500 Pennsylvania Avenue, NW, Room 3044
Washington DC 20220
Catherine Grason
Robert D. Morrow Jr.