

A Commentary on Health Savings Accounts

by Robert H. Spicknall

Health Savings Accounts (HSAs) were enacted by law as part of the Medicare Prescription Drug Improvement and Modernization Act of 2003 (prescriptions for seniors).

At that time, I anticipated the new HSA approach would appeal to many Virginia State Bar members. As the VSB endorsed broker, I have attempted to make the Virginia legal community aware of HSAs through my publications, mailings, and conversations. My purpose has been not to convince, but rather to inform lawyers about this emerging approach to health insurance. For a full understanding of the fundamentals of health savings accounts, see http://www.vsbmic.com/hsa_vsbmic_2009.pdf.

In the 1940s, federal wage controls prohibited employers from raising employees' salaries. However, health insurance could be added as a benefit. Employers could deduct the cost of this benefit, and it was not taxable to the employer. The employer-provided health insurance system grew through the decades. Many will agree that over time consumers have become insulated from health costs — except for insurance premiums that have escalated almost continuously, despite efforts to curtail them through managed care.

Since the new century began, health insurance premiums have dramatically outpaced most other costs. While wages and profits increased roughly by 20 percent to 25 percent from 2000 to 2007, health insurance premiums doubled. The health savings account approach combines a high-deductible insurance policy with an Individual Retirement Account-like account for health care. Contributions to HSAs are on a pretax basis. Money can be withdrawn to pay for a broad definition of health services. Money in an HSA accumulates tax free from year to year.

Because of the high deductible, the HSA approach has been selected by those who anticipate limited medical expenses. Persons with chronic conditions, and high expected medical costs — including those on numerous expensive brand-name prescriptions — prefer the more traditional health insurance product that requires a smaller deductible or copayments.

The health savings account approach has also appealed to wage earners who are in the high tax brackets. According to the U.S. Government Accountability Office, among tax filers between ages 19 and 64, the average adjusted gross income (AGI) in 2005 for filers with HSAs was about \$139,000, compared with an AGI of \$57,000 for all other filers. Thus, it may be that HSAs have been selected by those with better-than-average average health and wealth.

Today a one-size-fits-all approach to health insurance does not appeal to many law firms. Partners or owners of a firm will often consider the HSA approach because they can often afford the higher deductible and they find this approach more tax advantageous. They also might have a strong desire to send fewer dollars to a health insurance company. Staff members continue to prefer typical insurance products that offer financial predictability, but many are beginning to consider the value of a lower-premium product.

Nationally, the number of people covered by a health savings account

approach continues to increase, according to America's Health Insurance Plans, and shows no sign of slowing.

In January 2008, 6.1 million persons were enrolled in HSAs. <http://www.ahip.org/content/default.aspx?docid=25947>

In recent years I have told people that the average health insurance deductible in this country was \$500. Some suggest that it is now \$1,000. As the \$1,000 deductible becomes more common — often with 20 percent coinsurance required — more attorneys and staff members may begin to consider the health savings accounts with a deductible that may be considered manageable (e.g., \$1,500 or \$3,000 with no coinsurance).

We are on an unsustainable path if the price of health insurance continues to outpace other costs by a factor of four. Law firms and solo practitioners will continue to evaluate buy-down options that include increased deductibles, copayments, coinsurance, and out-of-pocket limits. They also will continue to assess provider networks associated with health insurance. As groups move from a low-dollar copayment plan, the deductibles associated with the tax-favored HSA approach will be given greater consideration by more people.

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Assessing Substance Abuse and Mental Health among Lawyers

by Susan S. Grover and Mark R. Voss

A new study suggests that one in three Virginia attorneys have experienced adverse consequences as a result of substance abuse or mental health problems.

The study suggests that 27 percent of Virginia attorneys are unaware of the mental health and substance abuse assistance available to them through Virginia's Lawyers Helping Lawyers (LHL) program. In a time when stresses on the profession are mounting, this lack of awareness could be life threatening for attorneys.

The LHL study surveyed fourteen thousand Virginia attorneys about their perceptions of alcohol and drug use among lawyers, their personal alcohol and drug use, other mental health issues, and their awareness of Lawyers Helping Lawyers. The Virginia State Bar provided contact information for members, and the study was supported by Chief Justice Leroy R. Hassell Sr. and Manuel A. Capsalis, 2008-09 president of the Virginia State Bar.

Confidentiality protocols protected the identity of respondents. The nature of specific answers remains completely confidential and anonymous. The study is helping LHL better understand substance abuse and mental health issues within the legal community and ways in which LHL can effectively serve Virginia's lawyers.

LHL is a volunteer organization that offers help, education, and outreach to fellow attorneys in Virginia in complete confidence. LHL is not a moralistic organization that wants people to stop drinking. LHL wants to ensure that lawyers in trouble get the help they need. Many LHL volunteers have experienced substance abuse or mental health difficulties themselves; others have lived through

the experience through loved ones. LHL can be effective only if Virginia lawyers know that its services are available and understand that communications with LHL are held in the strictest confidence. In a profession where reputation is so important, and where traditional stigmas remain alive, understanding this confidentiality is essential.

Absolute Confidentiality

LHL's commitment to confidentiality is absolute. The study shows that some lawyers believe that requests to LHL for assistance may be reported to the Virginia State Bar. Nothing could be further from the truth. LHL's effectiveness depends entirely on lawyers believing the promise that nothing will be disclosed. Because attorneys fear damage to reputation from stigmas associated with alcohol and mental health issues, LHL depends on the legal profession's awareness and belief in the promise of absolute confidentiality. That promise is sacrosanct.

Do Attorneys Seek Help?

Lawyers in Virginia are doubtful about their colleagues' familiarity with LHL's services or their willingness to seek help from LHL or elsewhere. Eighty-one percent of those who responded to the questionnaire indicated that they believe that their fellow attorneys would not seek help for substance abuse or mental health issues. In contrast, those who responded to the questionnaire appear to be comfortable about contacting LHL to get help for themselves. Perhaps attorneys who chose to respond to the questionnaire best understand mental health and substance abuse issues.

Readers who would like more information about Lawyers Helping Lawyers may call (toll free and anonymously) (877) 545-4682 or e-mail info@valhl.org.

How Much Do Virginia Lawyers Drink?

There is a 5 percent difference between perceived and actual problems with alcohol. Nine percent of survey respondents self-reported current or past problems with alcohol. By contrast, responses to questions designed to measure actual practices indicate that 14 percent of respondents have problems with alcohol. This is higher than the national average. As might be expected, fewer attorneys than the national average report using illegal drugs or misusing prescription drugs than the national average.

The study validates the direction that LHL has taken in the past five years to expand services to attorneys for both substance abuse and mental health problems.

Lawyers Have Key Role in Reorganized Magistrate System

Virginia's magisterial system — the first contact many people have with the state justice system — has been reorganized in the past year, in an effort by the Supreme Court of Virginia and the General Assembly to improve the qualifications, training, and consistency of service provided by magistrates statewide.

"Our goal is to make the magistrate system the best that it can be," said Paul F. DeLosh, director of the department of judicial services for the Office of the Executive Secretary (OES) of the Supreme Court of Virginia.

Variations in procedures and application of law by magistrates were documented in a 2007 report to the General Assembly by a Court study group chaired by Thomas S. Shadrack when he was a circuit judge in Virginia Beach.

The General Assembly accepted many of the Court's recommendations for change and proposed legislation that went into effect July 1, 2008.

Now, all chief magistrates hired after that date must be members of the Virginia State Bar, and the newly hired magistrates they supervise must have bachelor's degrees.

Eventually, all magistrates will work full-time — not the combination of part-time and full-time that existed under the previous system. Magistrates serve all cities and counties twenty-four hours a day, seven days a week. They conduct hearings in person or through a video-conferencing system.

The chain of command has been realigned. Instead of reporting to the chief circuit judge of a jurisdiction, magistrates and chief magistrates now are under the supervision of the OES. The

executive secretary hires magistrates in consultation with the chief circuit judges in each region.

The state's thirty-two judicial districts have been grouped into eight magisterial regions, each of which has a supervisor who manages and assists the chief magistrates in the region. Approximately 440 persons work as magistrates in Virginia, either full-time or part-time.

Certification requirements have been expanded to include a four-week training session in Richmond for new hires and thirty days of on-the-job training, with additional requirements for the chief magistrate. Training includes topics to prepare them for decisions they will have to make: bail procedures, establishing probable cause, and issuing summonses and arrest, search, and civil warrants.

Magistrates also must obtain twenty mandatory continuing legal education credits annually.

A manual has been developed to set out the requirements for magistrates: limitations on other employment (they can't be law-enforcement officers or work for the federal government, for example); policies to prevent nepotism; and conflict-of-interest rules.

The manual also includes the Canons of Conduct for Virginia Magistrates. Magistrates are required to:

- Avoid impropriety and the appearance of impropriety in all activities.
- Perform the duties of the office impartially and diligently. A magistrate's duties take precedence over all the

See links to resources on the following page.

magistrate's other activities. A magistrate should do his or her work promptly, disqualify himself from matters in which his impartiality may be questioned, and abstain from public comment about pending court proceedings.

- Refrain from political activity inappropriate to the office, including leading a political organization, holding a political office, or soliciting funds for political purposes.

Failure to comply with those canons can result in discipline, such as requiring the magistrate to take additional training or adverse personnel actions.

In addition, the canons encourage magistrates to "[u]phold the integrity and independence of the judiciary by maintaining and enforcing high standards of conduct." And the canons allow magistrates to engage in "activities designed to improve the law, the legal system, and the administration of justice."

The procedure for complaining about magistrates also has changed. Previously, complaints typically went to the chief judge who supervised magistrates in a locality, and procedures for handling complaints varied.

Complaints now are submitted on a standardized form to the OES, which reviews the complaint to determine whether it alleges misconduct under the Canons of Conduct. If it does, the mat-

ter is investigated by the magistrate's regional supervisor. Complainants are notified of the findings.

The complaint process is for violations of the canons only. The OES encourages persons with complaints about a magistrate not issuing a warrant or other process in a criminal matter to consult with law enforcement officials or the local commonwealth's attorney.

The manual emphasizes the importance of the magistrate's role on the front lines of Virginia justice.

"It is essential that all magistrates realize that they are members of the State judiciary and that their actions are a direct reflection on the quality of justice in Virginia, especially to tourists and non-residents who may never

pass through Virginia again," the manual states.

"The magistrate must be careful to preserve the neutrality of the office when interacting with an attorney for the Commonwealth or a defense attorney as both have a vested [interest] in the outcome of a decision."

Virginia's Magistrate System — Links to Resources

Report on the Virginia Magistrate System (2007)

[http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD3472007/\\$file/RD347.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD3472007/$file/RD347.pdf)

Magistrate System Organizational Chart

<http://www.courts.state.va.us/courtadmin/aoc/djs/resources/magistrateorgchart.pdf>

Chief Magistrates List

http://www.courts.state.va.us/directories/chief_magistrates.pdf

Magistrate Manual, with Canons of Conduct

<http://www.courts.state.va.us/courtadmin/aoc/djs/programs/mag/resources/magman/toc.pdf>

Magistrate Complaint Procedure

http://www.courts.state.va.us/courtadmin/aoc/djs/programs/mag/forms/complaint_form_inst.pdf

Complaint Form

http://www.courts.state.va.us/courtadmin/aoc/djs/programs/mag/forms/complaint_form.pdf

Virginia Courts Website Redesigned

The Office of the Executive Secretary of the Supreme Court of Virginia has redesigned Virginia's Judicial System website — www.courts.state.va.us.

New features on the site include:

- A more prominent search feature.
- Information reorganized into logical categories to help site visitors — lawyers and laypersons — find information faster.
- Tabs designated “For Citizens,” “For Legal Community,” and “For Students/Teachers.”
- A “How Do I ...?” drop-down menu that helps visitors target their search.
- An online services page that provides quick information on such subjects as paying fines for driving and other offenses, preparing a form for family abuse protective orders, and calculating fees for filing civil actions and deeds.
- Easy access to forms often used in Virginia's courts.
- Contact information for Virginia's courts and departments in the state courts administrator's office.

The Web address remains the same, but previous users of the site might have to update bookmarks for some pages.