

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 Money can be withdrawn to pay for a broad definition of health services.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.

Law firms and solo practitioners will continue to evaluate buy-down options that include increased deductibles, copayments, coinsurance, and out-of-pocket limits.