

ObamaCare and HSAs—Issues of Concern

Current Status of HSAs: Enacted in 2003, Health Savings Accounts (HSAs) combine a tax-free account to pay for routine medical care with a low-cost insurance policy with a higher deductible. Since most American families live on fixed incomes, HSAs/high deductible health plans allow American families to send less of their money to insurance companies and put more money into a tax-free HSA to pay for routine care now or save for future health care needs.

As of May 2010, approximately [10 million Americans](#) were covered under HSA plans:

- Individual Market: 2.1 million
- Small Group Market: 2.9 million
- Large Group Market: 4.9 million

According to the 2010 Consumer Health Savings Update, American families have \$8.4 billion in HSAs to use for their health care now or in the future.

ObamaCare's Impact on HSAs

Tax Increases: ObamaCare raises taxes on HSAs and makes them less consumer friendly:

- January 1, 2011: Over-the-counter (OTC) drugs and other household health care items cannot be reimbursed tax-free from HSAs without a prescription. This will increase taxes on American families by \$5 billion.
- January 1, 2011: Penalty for non-qualified withdrawals from HSAs increases from 10 percent to 20 percent. There is no "hardship" exception. This will increase taxes on American families by \$1.4 billion.

Regulatory Concerns: Some other provisions of ObamaCare and how the Department of Health & Human Services (HHS) chooses to implement them can hurt families that use HSAs currently to satisfy their health care needs:

- **"Actuarial value" definition:** Under ObamaCare, health insurance plans are supposed to pay for at least 60 percent of the expected cost of covered benefits, on average (i.e., the "actuarial value"). The actuarial value takes into account the benefit package, deductible, copayment, and coinsurance differences for each plan. High-deductible plans typically have lower actuarial values than old-school health insurance plans or HMOs because they are not designed to pay for routine expenses. However, some high-deductible plans are combined with a health savings account, which is intended to pay for routine medical care. It is essential that HHS consider both the employer and employee annual HSA contributions when it sets the standards for determining whether these plans meet the minimum 60 percent actuarial value requirement. Failure to include the annual contributions in the actuarial value or failure to include it properly could determine whether HSAs will survive under ObamaCare.

- **Medical loss ratio (MLR) definition:** Lower-premium, high-deductible health plans are designed to pay fewer low-dollar, up-front medical bills than high-cost, low-deductible plans. This makes it more challenging for high-deductible plans to meet the minimum medical loss ratio requirements in ObamaCare. Will HHS consider the unique qualities of HSAs/HDHPs when MLRs are calculated?
- **“Essential benefits” definition:** ObamaCare requires health plans to cover “essential benefits,” which are supposed to follow “typical” employer plans. These plans usually have rich benefits, such as first-dollar coverage for preventive care. Despite [CBO’s](#) conclusion that preventive care actually increases health care spending without saving money, ObamaCare requires health plans to cover a comprehensive list of preventive services with no cost sharing. After HSAs were enacted in 2003, the United States Department of Treasury issued regulations, which allow (but not require), HSA/high-deductible health plans to cover certain preventive services. It is important that HHS define “preventive care” services consistent with the definition used by the Treasury Department for HSA/high-deductible health plans so these plans can remain “HSA-qualified.” However, requiring HSA/high-deductible health plans to cover all preventive services on a first-dollar basis will force people to send more money to the insurance company and leave less money for their HSA.
- **“Grandfathering:”** According to several HSA providers, customers with HSAs keep their policies for a longer period of time than old-school insurance plans. They cite smaller rate increases, free choice of doctors, and overall higher customer satisfaction with HSAs as the reasons for a higher retention rate. The Obama administration has already admitted that up to 69 percent of people with employer-provided coverage will be forced to drop their current coverage on January 1, 2014, when ObamaCare’s mandates and requirements start. Will existing HSA plans be grandfathered or will the administration force satisfied customers to cancel their HSA?