



## HSA Update



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*Welcome to the HSA Update, keeping you up-to-date on the Health Savings Account marketplace with bi-weekly analysis and review of public policy, market innovations, and technology advances in the HSA arena.*

### ■ HSA Council Response to HHS Request: MLR

In response to HHS' request for comments prior to establishing Medical Loss Ratio (MLR) regulations, the HSA Council submitted the following letter.

#### Text of the letter:

Health Savings Accounts (HSAs) are the fastest growing health care and banking product in America. They offer individuals and families the ability to control their spending, to save money over time for future medical expenses, and to preserve their choice of providers at substantial savings over traditional plans.

Millions of Americans, working for private companies, in government, or who are self-employed pay their health-related expenses with an HSA. One reason this is the case is because HSA-qualifying high deductible health plans (HDHPs) are the first insurance products historically proven to bend the cost curve for health care downward.

Currently, HSA qualified plans serve the exact segment of the American population the PPACA was intended to aid the most – the middle class. While PPACA appears to preserve HSAs as a low cost option for all Americans, the members of the ABA's HSA Council are concerned about the potential unintended consequences regulations pertaining to MLR and other mandated coverage and benefit level provisions may have.

The important work of improving access to care by making health insurance more affordable requires more insurers competing against each other to lower prices. Achieving affordability through price competition will be difficult in a marketplace where health insurers are required to sustain a minimum loss ratio.

The ability to increase coverage for currently uninsured Americans depends upon the availability of low cost, HSA-qualifying plans. The effect of imposing loss ratios on health insurers – essentially regulating profit margins – may be to drive many of them out of business and impair our ability to serve this under-served market.

Another challenge arises from the fact that the law includes a mandate for individuals to purchase health insurance and penalties for companies that do not offer it to their employees. A mandate to buy insurance is especially burdensome if there is no affordable insurance to buy. A mandate to offer employee benefits is similarly onerous if the cost of the benefits is too great per employee to avoid the penalty.

Were MLR regulations to shrink the availability of insurers offering HSA-qualified plans, employers would have no choice but to offer higher-cost plans which would vastly increase the number of small businesses subject to the penalty.

This dynamic is not something we expect the rulemaking process to reverse. We hope, however, that through careful attention to timing and the categories of expenses excluded from the MLR calculation, many of the expected market deflections resulting from the imposition of the MLR provisions can be avoided.

***For these reasons we recommend that MLR regulation contemplate exclusion of HSA-qualifying plans.***

In addition, we recommend that the Department consider the effects on MLR calculations achieved by including contributions to the HSA.

The process of aggregating and making judgments about the most effective way to achieve this legislation's stated goals – lower-cost insurance available to more Americans – is a daunting one. The members of the HSA Council are committed to assisting in any way we can and look forward to working with you during the regulatory process.

■ **AHIP 2010 HSA Survey Results**

America's Health Insurance Plans (AHIP) released the results from its 2010 HSA/HDHP survey. This survey is the largest of its kind but may still not include some self-funded companies that use non-carrier-based TPAs that may not be AHIP members. Note also that the survey does not include Americans enrolled in similar "HRA" plans. Highlights include:

**ENROLLMENT TRENDS**

- The number of people with HSA/HDHP coverage rose to 10 million in January 2010, up from 8 million in January 2009, and 6.1 million in January 2008.
- Between January 2009 and January 2010, the fastest growing market for HSA/HDHP products was large-group coverage, which rose by 33 percent, followed by small-group coverage, which grew by 22 percent.
- Gender distribution of lives covered by an HSA/HDHP as of January 2010 was 52 percent male and 48 percent female.

**GROUP MARKETS**

- Overall, enrollment in HSA/HDHP coverage in the group market rose to 8.0 million in January 2010, up from 6.2 million in January 2009.
- Nearly 3 million lives were enrolled in HSA/HDHP coverage in the small-group market, and almost 5 million lives were covered in the large-group market.

**INDIVIDUAL MARKET**

- Enrollment in the individual market rose to 2.1 million covered lives in January 2010, up from 1.8 million in January 2009.
- Fifty-two (52) percent of all individual market enrollees — including dependents covered under family plans — were aged 40 or older.

**ENROLLMENT BY STATE**

- States with the highest *levels* of HSA/HDHP enrollment were: California (1,018,000); Ohio (651,000); Florida (639,000); Texas (637,000); Illinois (575,000); and Minnesota (361,000).
- States with the highest *percentage* of HSA/HDHP enrollees among their under-65 populations with private health insurance were: Vermont (13.8 percent); Minnesota (9.2 percent); Colorado (9.2 percent); Arkansas (8.2 percent); Indiana (8.1 percent); and Ohio (8.0 percent).

**COVERAGE OPTIONS**

- HSA/HDHP plans accounted for 11 percent of all new health insurance purchases in January 2010.
- Over 90 percent of responding companies reported offering access to HSA account information,

health education information, physician-specific information and personal health records as consumer decision support tools for their members.

You can see the full survey on the [HSA Council's website](#).

## ■ Interchange Provision in the Senate Financial Reform Bill

The following will apply to HSA transactions. A possible means of covering the transaction costs would be to take the costs out of the monthly account fee.

### BACKGROUND

Despite aggressive lobbying efforts by the ABA, state bankers associations, and bankers throughout the country, the Senate adopted, by a [vote of 64-33](#) an [amendment](#) offered by Senator Richard Durbin (D-IL) that significantly impacts the interchange revenue associated with debit cards. The amendment's adoption was a direct response to the retail industry's long-term lobbying efforts for Congress to intervene in order to reduce retailer interchange costs. The amendment applies to all issuers, including banks and credit unions, except as noted below.

### WHAT THE AMENDMENT DOES

- [Restrictions on Debit Interchange Fees](#): Limits interchange fees on **debit card** transactions to those which are *reasonable and proportional to the actual cost incurred by issuers or card networks with respect to the transaction*. The Federal Reserve is directed to issue rules regarding what is reasonable and proportional, and can only consider those costs associated with running that one transaction through the payment system. The amendment specifically states that the Fed cannot consider other costs not specific to the transaction, so operating, fraud, overhead and other costs, as well as a reasonable return on investment, are excluded. This specificity is expected to drive interchange fees on debit cards to close to zero.

The amendment explicitly states that issuers that have less than \$10 billion in assets (including affiliates) would be exempt from this interchange fee price regulation. This exemption is meaningless, as market factors will dictate that higher-priced debit cards from community banks would be unlikely to exist or be disfavored, e.g., networks establishing debit interchange rates for *all* issuers at the required lower levels to minimize competitive inequities in the market place, or merchants/large issuers finding other ways to incentivize customers to use preferred cards.

- [Restrictions on Network Rules on Discounts](#) : Prohibits the payment system networks (e.g., Visa, Mastercard, Discover and American Express) from setting forth rules that restrict a merchant's ability to discount products based on the use of **debit or credit cards** issued over various networks, or between cash, check, debit, or credit cards.

There continues to be controversy over whether the amendment would permit merchants to discriminate against particular issuers, e.g., provide discounts on purchases only if the customer uses a particular card of a particular issuer or network, thus driving consumers to open accounts only at certain preferred institutions (such as where a big-box retailer established a deal with a large bank). Senator Durbin repeatedly expressed on the Senate Floor that the amendment would not permit such discrimination. However, a literal reading of the legislative language seems to permit merchants to (1) discriminate based on network, i.e., provide discounts for cards issued over one network versus another network (but if the merchant does so, it may not differentiate between cards within that network), and (2) to discriminate between issuers and types of card if the merchant is not providing discounts based on which network issued the card. In short, we believe that the language permits merchants to discriminate against particular issuers, raising the potential that this provision can cause significant harm to community banks throughout the country.

- [Restrictions on Network Rules on Minimum or Maximum Dollar Payments](#): Prohibits the payment system networks from inhibiting a merchant from setting minimum or maximum dollar amounts for the use of **credit cards**. In doing so, the merchant cannot differentiate between issuers or card networks.

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HSA Update is edited by Kevin McKechnie, ABIA executive director, and Renee Galbraith, health policy manager. Please visit our Web site for daily news updates, in-depth legislative analysis, and resources for implementing HSAs. [www.hsacouncil.com](http://www.hsacouncil.com)

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