



December 8, 2010

*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.*

### **IRS' OTC Drug Rule Delay Will Apply to HSAs**

In the November 11, 2010 issue of the HSA Update we reported that, due to industry concerns, the IRS has delayed for two-weeks the provision of PPACA that prohibits the purchase of many over-the-counter (OTC) drugs with a healthcare debit card.

That provision will now come into effect on January 15, 2011.

According to IRS' Notice 2010-59, the IRS will accept the use of FSA and HRA debit cards for OTC prescription medication expenses through Jan. 15, 2011, to give pharmacies time to make the change in their systems. After January 16, however, merchants need to substantiate that the OTC medication was prescribed before a reimbursement can be made.

The IRS Notice does not seem to include HSAs in the extension. However, since HSA purchase do not require written substantiation, like FSAs and HRAs, the two week extension may not be needed for HSA cards since it will not be as problematic for merchants who process the transactions.

The National Association of Chain Drug Stores (NACDS) is now asking the IRS for a two-year delay in the provision. It is the position of the HSA Council that if the provision is delayed for FSAs and HRAs, it should be delayed for HSAs as well.

The HSA Council contacted Mr. Harry Becker at the IRS to verify that HSAs would also be granted an extension.

Mr. Becker stated that the "IRS would not enforce a different rule for HSA debit cards [as for FSA and HRA debit cards]." Therefore, Mr. Becker continued, the two-week extension does apply to HSA debit cards and that, if another extension is granted, it would also apply to HSA debit cards.

[Read the IRS Notice.](#)

### **House Makes Recommendations for Committee Chairmen**

The House Republican Steering Committee made its recommendations yesterday for committee Chairmen in the next Congress.

For the three committees of jurisdiction for HSA-related legislation, the Steering Committee recommended Rep. John Kline (R-MN) for Education and Labor, Rep. Fred Upton (R-MI) for Energy and Commerce, and Rep. Dave Camp (R-MI) for Ways and Means.

Among other Chairman recommendations, the Steering Committee chose Rep. Spencer Bachus (R-AL) to be the next House Financial Services Committee Chairman, Rep. Frank Lucas (R-KY) for Agriculture, Rep. Hal Rogers (R-KY) for Appropriations, Rep. Paul Ryan (R-WI) for Budget, , Rep. Peter King (R-NY) for Homeland Security, Rep. Lamar Smith (R-TX) for Judiciary, Rep. Darrell Issa (R-CA) for Oversight and Government Reform, and Rep. Sam Graves (R-MO) for Small Business.

The full House Republican conference is meeting today to vote on the Steering Committee's recommendations.

## **EB Brokerage and HIPAA Compliance**

Occasionally, we get a panic-stricken phone call from a banker about HIPAA compliance (the Health Insurance Portability and Accountability Act). The story is always the same:

The banker ran into a lawyer at a conference somewhere and discovered, to their horror, that the lawyer thinks they should be complying with HIPAA.

Not to further denigrate the reputation of our friends before the Bar, but this sounds like the legal profession yelling the “sky is falling” and hoping for a retainer to bring the bank into compliance.

Our advice: hold on a minute. Go visit the website for the Department of Health and Human Services (HHS) and go through the checklist to determine which activities might make a bank a covered entity and which do not. I think you’ll be surprised.

The act of administering a Health Savings Account (HSA) does not trigger compliance with HIPAA. If it did, that would be like saying checking accounts are covered by HIPAA. To be a “covered entity”, HIPAA requires the business to be a health care provider, and health care clearinghouse, or a health plan. HSAs do not constitute a health plan and are not, therefore, a reason for a bank to be considered a covered entity.

This is not the case for Flexible Spending Arrangements (FSAs) and Health Reimbursement Accounts (HRAs) which are part of a health plan. Perhaps there is some confusion there.

Unfortunately, the situation is even murkier when a bank adds to the services it provides to its HSA clients. If the bank brokers the HDHP or operates a claims adjudication website, HIPAA may apply in the sense that the bank may be a “business associate” of a “covered entity”.

This is where good legal counsel can make a difference. If you need some suggestions for where to find a good HIPAA lawyer, send me an email.

**Kevin McKechnie**

**[Read the HHS Checklist.](#)**

## **CIGNA’s Choice Fund Experience Study**

According to the finding of CIGNA’s Choice Fund Experience Study, individuals covered by CIGNA Choice Fund CDH [Consumer Driven Health] plans improve their costs without compromising care by becoming more engaged in improving their health and by becoming informed health care consumers.

Based on the findings, CIGNA states, “when Americans engage in health-smart habits such as participating in health coaching and disease management programs, substituting generic medications for brand name drugs and avoiding unnecessary trips to the emergency room, their total medical costs went down 15 percent...”

The findings show:

- Health coaching and disease management program participation: CIGNA CDH plan customers are up to 19 percent more likely to participate in the CIGNA Health Advisor® health coaching program compared to those enrolled in a traditional plan. Individuals with chronic illnesses covered by CDH plans are 21 percent more likely to participate in their plan’s disease management program.
- Generic medications: CIGNA CDH plan participants who also have CIGNA Pharmacy Management benefits choose generic equivalent drugs 70 percent of the time.
- Avoiding Unnecessary ER visits: The study also shows that CDH plan enrollees use the emergency room

at a 13 percent lower rate than individuals who have HMO and PPO plans. When CIGNA Choice Fund customers visit an urgent care facility, their doctor's office or convenience clinic instead of the ER, they saved an average of \$800.

- **Informed choices:** Customers enrolled in a CIGNA CDH plan are more likely to use online information and tools through myCIGNA.com; use of myCIGNA increases by 40 percent when customers are enrolled in a CDH plan. The study also shows CDH plan enrollees are five times more likely to complete a health assessment compared to those enrolled in a traditional plan.

[Read the CIGNA Study.](#)

### **HSA Update Holiday Schedule**

With the upcoming Holiday season, this will be the last HSA Update prior to the New Year. It will return on January 4, 2011.

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The HSA Council offers several membership levels, one of which is sure to meet the needs of your company.

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HSA Update is edited by Kevin McKechnie, ABIA executive director, and Renee Galbraith, health policy manager. The HSA Council is a joint effort of the American Bankers Association and its insurance affiliate, the American Bankers Insurance Association. Please visit our Web site -- [hsacouncil.com](http://hsacouncil.com) -- for daily news updates, in-depth legislative analysis, and resources for implementing HSAs.

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