

HSAs **can** function in a “reformed” insurance market of guaranteed issue, modified community rating, mandated benefits, and no refusal for coverage because of pre-existing conditions **only if** such changes are made to all health insurance plans. However, the following two changes must still be made to the health reform legislation for HSAs to survive:

1. **Actuarial Value of a Health Plan:** Congress wants to dictate how much insurance coverage everyone must buy. In an effort to “protect consumers,” Congress is trying to specify a minimum percentage of covered benefits (i.e., the “actuarial value”) that must be paid by the insurance plan. Because HSAs have a higher deductible (and the plan pays for no benefits below the deductible) the plan charges a lower premium which generates savings that can be deposited into an HSA. But Congress is attempting to set the limit for covered benefits, making it virtually impossible for HSA plans to be offered in the future. Because the calculation does not take into account the contribution to the Health Savings Account (the bills simply pretend the contributions do not exist), HSAs will not be able to be offered, or if they are offered, they may be called an HSA plan but the premium will cost the same as a traditional plan.

To solve this problem, the legislation must explicitly allow inclusion, in the calculation of the actuarial value of the plan, of the contributions made by employers and employees and individuals to the HSA.

2. **Mandates Imposed below the Deductible:** In the current HSA program, the only benefit HSA plans can provide below the deductible is preventive care. This provides an incentive to stay healthy by taking advantage of recommended preventive care and avoid illness later. But the legislation that has passed each of the three U.S. House committees and the U.S. Senate HELP Committee gives the HHS Secretary broad authority to impose whatever plan mandates he or she wants on all plans in the Health Insurance Exchange. This authority could include requiring plans to provide other first-dollar coverage for benefits that would be in conflict with HSA law. This means that plans participating in the Exchange could not qualify for HSAs. In Massachusetts, this authority led to cost increases that made HSA-qualified plans cost the same as traditional insurance. This means that only the wealthy buy HSAs because only they have money left over to fund the deductible.

To solve this problem, the legislation must prohibit the HHS Secretary from imposing “first dollar” coverage (or other benefits below the deductible) requirements on any benefits.

As of now, the only way these provisions will be included is if the HSA community, and HSA owners, contact their Member of Congress and their Senators and tell them that unless:

- a) Congress includes the contribution to the HSA in the actuarial value calculation; and,
- b) there is a prohibition on mandated benefits below the HSA deductible, other than preventive care as is now under current law.

HSAs will not survive, and they will no longer be offered as an option. You will not be able to “keep your plan if you like it,” as was promised repeatedly by President Obama.

Therefore, you should ask your Member of Congress to vote against the health reform legislation, unless these changes are made.

If you work for a company that offers HSA services, then your job depends on HSAs being allowed to continue. If you have an HSA, then you will lose it. Please contact your Congressman’s district office during August, since they will be at home during the August break.

If you do not know who your Congressman is, or do not know your district office, call the Congressional switchboard 202-225-3121, and give them your zip code. They will tell you who your Representative is, and how to contact their district office.

NOTE: There was an attempt to correct this problem in the U.S. House Energy and Commerce Committee by amendment. Unfortunately, the amendments were drafted in an overly broad manner which contributed the amendment’s defeat. Three Democrats voted for the amendment. The amendment would have, as drafted, exempted HSAs from of anti-discrimination protections, guaranteed issue, modified community rating, or refusal for coverage because of pre-existing conditions (changes that will be made to all health insurance plans).

The language of the amendment in the Energy and Commerce Committee was as follows:

“Add at the end of section 201(c) (relating to the definition of Exchange-participating health benefits plan) the following: "In the case of a health benefits plan offered in conjunction with a health savings account under section 223 of the Internal Revenue Code of 1986, including plans offered under chapter 89 of title 5, United States Code, such plan and account shall be treated (except for purposes of affordability credits under subtitle C) as a qualified health benefits plan that may be offered through the Health Insurance Exchange."