

December 26, 2012

Gary Cohen, Director
Office of Consumer Information and Insurance Oversight
Department of Health and Human Services
Attention: CMS-9980-P
Room 445-G
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Dear Director Cohen:

On behalf of the members and Board of Directors of the ABA's HSA Council¹, thank you for the opportunity to comment on the proposed rule "Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation," issued pursuant to the Patient Protection and Affordable Care Act (PPACA) and published in the November 26, 2012 *Federal Register*.

Health Savings Accounts (HSAs) and the accompanying qualified health plan are becoming the dominant plan design employers prefer. We are pleased the proposed rule and accompanying AV calculator embrace HSA-plan design trends that are already well established in the marketplace.

Encouragingly, the proposed rule's treatment of HSA plans extends to small businesses and individuals the same advantages employers already enjoy. Despite this very good news, there remains one significant issue left unresolved: the calculator's treatment of contributions. The industry remains concerned that the rule's treatment of contributions to the account understates the value of those dollars and their purpose.

As we experiment with the calculator, it's clear that some value is given to employer contributions but not full value. We have commented previously that counting HSA contributions "in full," without adjustment, extends to HSA contributions the same treatment those dollars would have received if they were paid premiums. The idea of HSA plans is to re-direct dollars saved from lower cost premiums into the account; however, in both cases those dollars are used to pay claims.

¹ The ABA's HSA Council is made up of FDIC insured depository institutions, health insurers and their technology partners. The ABA's HSA Council advocates on behalf of account-based health care financing solutions in the United States and is part of the American Bankers Association.

² March 2, 2010 letter from President Obama to Senate Majority Leader Harry Reid, Senate Minority Leader Mitch McConnell, House Speaker Nancy Pelosi, and House Minority Leader John Boehner, found at: <http://www.whitehouse.gov/blog/2010/03/02/president-obama-follows->

The rule implies that dollars paid as premium are treated differently than dollars contributed to the account irrespective of the fact that in both cases the use of the dollars is identical.

Accordingly, we would like to renew our concern that the proposed rule's treatment of contributions to the HSA doesn't count them as pre-paid claims or, in the alternative, does not treat the contribution as payments in lieu of payments that would otherwise have been paid premiums. The AV rule continues to discriminate against HSAs generally in that regard, and fully insured HSA-qualified plans in the individual and small group markets in particular.

As you are aware, these markets are precisely the segments in need of the most relief and HSAs offer the only proven cost reductions in the marketplace.

We believe that the AV rule and calculator for HSA-qualified plans should be constructed so that:

1. All employer contributions are counted at 100%, not "adjusted;" and,
2. All individual contributions are counted at 100%, not "adjusted;"

Treatment of contributions, at least up to the deductible, will remain an important issue in the application of the calculator going forward, although we find the broad treatment of HSAs by the calculator favorable.

As a result, we feel we can assure the millions of nervous Americans that want to keep their HSAs that the rules have been designed so they can. In addition, once the mandate requires all Americans to buy insurance, or face a penalty, the good news is that the rules ensure that affordable HSA plans can be offered.

In his March 2, 2010 letter² to Speaker Pelosi, Majority Leader Reid, Minority Leader McConnell and Minority Leader Boehner, the President assured Senator Barrasso about the viability of HSAs in the Exchanges when he said,

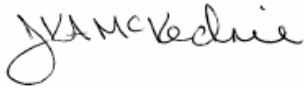
"I believe that high-deductible health plans could be offered in the exchange under my proposal, and I'm open to including language to ensure that is clear. This could help to encourage more people to take advantage of HSAs."

The design of the AV rule and the calculator ensure that the President will be able to keep his word. This kind of regulatory certainty is necessary and, therefore, welcome.

² March 2, 2010 letter from President Obama to Senate Majority Leader Harry Reid, Senate Minority Leader Mitch McConnell, House Speaker Nancy Pelosi, and House Minority Leader John Boehner, found at: <http://www.whitehouse.gov/blog/2010/03/02/president-obama-follows-thursdays-bipartisan-meeting-health-reform-0>.

We understand the complexity of the task before HHS and look forward to working constructively with you to ensure that the greatest number of Americans possible have access to health insurance they can afford. Expanding access to HSAs, with the flexibility in the proposed rule, seems the best way to do that.

Respectfully,

A handwritten signature in black ink that reads "Kevin McKechnie". The signature is written in a cursive style with a large initial "K" and "M".

Kevin McKechnie
Executive Director