

# HSA COUNCIL

*A Partnership of the American Bankers Association and its  
insurance affiliate, the American Bankers Insurance Association*

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**J. Kevin A. McKechnie**  
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May 14, 2010

Department of Health and Human Services  
Room 445-G  
Attention: DHHS-2010-MLR  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 20201

RE: DHHS-2010-MLR; PPACA Medical Loss Ratio (MLR) Mandates

To Whom It May Concern:

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<sup>1</sup> 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.

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

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 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.

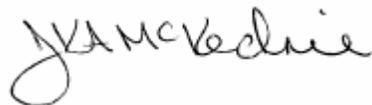
This dynamic is not something we expect the rulemaking process to reverse. We hope, however, that through careful attention to timing and the categories of expenses excluded from the MLR calculation, many of the expected market deflections resulting from the imposition of the MLR provisions can be avoided.

***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.

Sincerely,

A handwritten signature in cursive script that reads "Kevin McKechnie". The signature is written in dark ink and is positioned above the typed name and title.

Kevin McKechnie  
Executive Director.