# ACA, HIPAA AND FEDERAL HEALTH BENEFIT MANDATES:

# Practical Q&A

*The Affordable Care Act (ACA), the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and other federal health benefit mandates (e.g., the Mental Health Parity Act, the Newborns and Mothers Health Protection Act, and the Women's Health and Cancer Rights Act) dramatically impact the administration of self-insured health plans. This monthly column provides practical answers to administration questions and current guidance on ACA, HIPAA and other federal benefit mandates.*

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# Passage of House Bills Warrants a Fresh Look At Health Savings Accounts - Part One

Health savings accounts (HSAs) provide a tax-favored means for individuals to save and pay for medical expenses not covered by insurance. In order to contribute to an HSA, the individual must be enrolled in a specially defined type of plan called a high deductible health plan (HDHP) and have no other health plan coverage (other than certain limited types of permitted coverage such as vision, dental, accident, specified disease, and certain fixed indemnity coverage).

The combination of an HDHP and an HSA is commonly referred to as a consumer driven health plan. While the premium for the HDHP may be only slightly lower than the premiums for health plans with a lower deductible, the tax savings from the HSA is what generally makes these arrangements attractive. HSAs were first available starting in 2004.

Since then, as traditional health coverage premiums have continued to increase, interest in these types of consumer driven health plans has increased. Survey data indicates that in 2017, 43.7% of persons under age 65 with private health insurance were enrolled in an HDHP, including 18.2% who were enrolled in an HDHP with an HSA.[1]

House passage of proposed HSA improvement legislation (the "HSA Bills") in July could resolve many potential compliance issues and make HSA/HDHP arrangements even more accessible and easier to use.

This two-part article provides a brief overview of HSAs and addresses key legislative developments based on the HSA Bills. In this Part One of our two part series we address the tax benefits associated with an HSA, who can establish an HSA, what types of coverage qualify as HDHP coverage and what additional coverage may be allowable.

### 1. What is an HSA?

An HSA is a tax favored account that is established through a bank or other qualified financial institution. Often, insurance companies that offer high deductible health plans that are compatible with HSAs partner with financial institutions that serve as custodians for HSAs.

Similar to an individual retirement arrangement (IRA), HSAs are owned by the individual account holder. This means that (unlike Health FSAs) any unspent funds remain in the account and accumulate from year to year, with earnings based on how the HSA is invested.

Because the HSA is owned by the individual, they are also portable, that is, they remain the property of the individual even if they change employers (or retire). Also similar to an IRA, upon death, the HSA may be transferred to a beneficiary.

### 2. How are HSAs taxed? The Triple Tax Trifecta

*Contributions* made to an HSA by eligible individuals are deductible for federal (and most state) income tax purposes (regardless of whether the individual itemizes deductions). Employer contributions (including pre-tax salary reductions) are excludable from employees' incomes and are not subject to payroll (e.g., FICA) taxes.

*Income* on amounts held in an HSA accumulate on a tax-free basis until withdrawn from the account.

*Distributions* from an HSA for qualified medical expenses are tax free. In order to qualify, these expenses must not be reimbursed from another source and must be incurred after the HSA is established.

As we discuss in our next article, the requirement that an expense be incurred after the HSA has been established has caused some administratively difficulty related to the timing of the HSA establishment that would be addressed by the proposed HSA Bills. Non-qualifying distributions are includible in income and also subject to an additional 20% excise tax penalty.

The additional 20% tax does not apply to distributions made after the individual account owner reaches age 65, becomes disabled, or dies. Thus, for such individuals, if the HSA is not needed for medical expenses, it may be used to supplement retirement income.

### 3. Who can establish an HSA?

In order to contribute to an HSA, the individual must be covered by an HDHP and no other health plan, other than certain limited types of coverage. Currently, individuals who are enrolled in Medicare (including Medicare Part A) are not entitled to contribute to an HSA. This is another limitation that would be addressed by the HSA Bills.

### 4. What is an HDHP?

An HDHP is a health plan that does not pay any benefits (other than for certain preventive care) before the deductible is met. The individual is responsible for 100% of covered medical expenses (other than permitted preventive care) before reaching the HDHP plan's deductible. The HSA Bills would open the door to certain limited benefits for onsite and retail clinic care, direct primary care, chronic care expenses, and certain fitness and exercise-related expenses.

An HDHP must also satisfy dollar limits on the deductible and out-of-pocket (OOP) medical expenses, as summarized in the following table. These dollar limits are indexed annually. Applying the OOP limit looks a little complicated, because there are two different limits that apply: one under the definition of an HDHP for HSA purposes, and the other under the Affordable Care Act (ACA) that applies generally to medical plans. As a general rule, the HDHP need merely comply with whichever limit is the most restrictive.

High Deductible Health Plan Limits

| **Limit** | **Self-Only Coverage** | | **Family Coverage** | |
|---|---|---|---|---|
| | **2018** | **2019** | **2018** | **2019** |
| Minimum Annual Deductible | $1,350 | $1,350 | $2,700 | $2,700 |
| HSA Maximum Limit on Out-of-Pocket Expenses<br><br>(OOP expenses include the deductible and any co-payments or co-insurance for in-network services) | $6,650 | $6,750 | $13,300 | $13,500 |
| ACA OOP Limit (OOP expenses include the deductible and any co-payments or co-insurance for in-network services for essential health benefits) | $7,350[2]<br><br>(applies separately to each individual under family coverage) | $7,900 | $14,700 | $15,800 |

A couple of additional points to keep in mind on the definition of an HDHP:

- *Separate deductibles for individuals in a family under an HDHP:* Some family health plans have separate deductibles for each individual as well as an overall deductible for the entire family. Under this type of plan, if the deductible is met for any individual family member, then the plan pays benefits for that individual, even if the higher family deductible is not met. For this type of plan to qualify as an HDHP, both the family deductible and the (so-called "embedded") individual deductible must be at least the minimum family deductible.
    - For example, suppose in 2018 a family health plan has an overall deductible of $4,000, but pays benefits for any particular individual subject to a deductible of $2,000. This plan does not qualify as a HDHP. The individual deductible would need to be at least $2,700.

- *Interaction of HDHP OOP limit and ACA OOP limit:* HDHPs are subject to both the HDHP OOP maximum and the ACA OOP maximum that applies generally to health plans. The limits, unfortunately, are not the same and apply in somewhat different ways. Under federal agency rules, the ACA individual OOP maximum must be applied separately to each individual under a family plan. The interaction of these two rules means that HDHPs must comply with the lower of the two limits.
    - Example: Suppose in 2018 a family health plan has an OOP limit of $13,300. This plan satisfies the OOP max for a HDHP. However, in order to satisfy the ACA rules, the plan must also have a separate OOP limit for each individual of no more than $7,350.

## 5. What types of coverage in addition to the HDHP are permitted?

HDHPs are intended to make individuals more aware of and involved in their health care decisions by ensuring that the individual has "skin in the game" for medical expenses before the deductible is met. Thus, in general, individuals may not have health coverage in addition to an HDHP and also qualify for an HSA. The HSA helps to fill the gap by providing a tax favored means of saving for medical expenses not covered by the HDHP.

A limited exception applies, however, for certain types of permitted insurance and permitted coverage. Under this exception, individuals can have certain types of coverage and still be eligible to contribute to an HSA. Permitted insurance and coverage currently includes:

- Accident and disability coverage
- Insurance coverage for a specified disease (e.g., cancer) or illness (sometimes called "critical illness" coverage)
- Hospital indemnity insurance coverage that pays a fixed amount per day (or other period) of hospitalization
- Dental and vision care
- Long-term care

The HSA Bills would open the door to individuals with bronze and catastrophic plan coverage, coverage that provides a limited amount of specified expenses before the deductible applies (e.g., $250 individual and $500 family), certain limited benefits for onsite and retail clinic care, direct primary care, and certain fitness and exercise-related expenses. ■

***References***

1 https://www.cdc.gov/nchs/data/nhis/earlyrelease/insur201805.pdf

2 Note, that an embedded individual OOP limit applies for ACA compliance purposes, but no such requirement applies for HSA purposes.