LEGISLATIVE UPDATE

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Introduction: New Healthcare Legislation Passes in the House

In July 2018, three bills related to consumer-directed healthcare (CDH) were passed by the House of Representatives. The bills were brought forward by the House Ways and Means Committee as well as the Energy and Commerce Committee (H.R.6311).

H.R. 1476
Native American Health Savings Improvement Act

H.R. 6311
Increasing Access to Lower Premium Plans and Expanding Health Savings Accounts Act of 2018

H.R. 6199
Restoring Access to Medication and Modernizing Health Savings Accounts Act of 2018

These bills are the most impactful legislation affecting Health Savings Accounts (HSAs) and CDH since the creation of HSAs in 2003. If these changes become law, they will positively impact tens of millions of Americans. Most of these modifications have been actively lobbied for nearly a decade.

These changes seek to better coordinate high deductible health plan (HDHP) coverage to meet more Americans' healthcare needs while helping consumers save more money and improve health engagement. The benefits of these changes include: simplification of many logistical challenges that HDHPs and HSAs have encountered over the last 14 years, expansion of HSA eligibility to working seniors enrolled in Medicare Part A and Native Americans utilizing Indian Health Services, and increase of HSA and Flexible Spending Account (FSA) contributions and savings.

The healthcare landscape has changed significantly since the creation of HSAs; these improvements will modernize HSAs to better serve Americans' physical and financial healthcare needs.

H.R. 1476: Native American Health Savings Improvement Act

Sec. 2. Individuals eligible for Indian Health Service assistance not disqualified from health savings accounts.

This bill, which was first introduced in the House in March 2017, amends the Internal Revenue Code to specify that receiving hospital care or medical services under a medical care program of the Indian Health Service or a tribal organization does not disqualify an individual from being eligible for a health savings account.

Currently, Native Americans must wait three months after receiving medical care at an Indian Health Service facility before they can make a contribution to their HSA again. The Native American Health Savings Improvement Act eliminates that restriction and allows Native Americans to make contributions to their HSAs at any time.

H.R. 6311: Increasing Access To Lower Premium Plans and Expanding Health Savings Accounts Act of 2018

Sec. 2. Carryforward of health flexible spending arrangement account balances.

Currently there is a $500 restriction to FSA rollover from year to year. This provision allows FSA balances to be carried over to the following plan year as long as the balance in an account does not exceed three times the annual FSA contribution limit. The FSA contribution limit for 2018 is $2,650, meaning the maximum balance in an FSA could be $7,950. This provision would alleviate the frustration consumers experience with unused FSA funds exceeding the current $500 rollover limit.

Sec. 3. Individuals entitled to part A of Medicare by reason of age allowed to contribute to Health Savings Accounts.

This provision allows HSA eligibility for individuals enrolled in Medicare Part A covered by a qualified high deductible health plan (HDHP). Individuals can continue making HSA contributions after Medicare enrollment. This will alleviate frustration for working individuals 65+ who were previously required to stop contributions once enrolled in Medicare.

Sec. 4. Maximum contribution limit to health savings account increased to amount of deductible and out-of-pocket limitation.

This provision increases the HSA contribution limit to the out-of-pocket maximum. For 2018 , the out-of-pocket maximums are $6,650 for an individual and $13,300 for a family; this effectively doubles the HSA contribution limits. The increase in contribution limits would better allow consumers the ability to cover their health plan deductible and out-of-pocket maximum with tax-advantaged HSA funds and maximize their future healthcare savings.

Sec. 5. Allow both spouses to make catch-up contributions to the same health savings account.

Individuals qualify to make additional contributions of $1,000 over the single or family limit if they are eligible for an HSA, over age 55 and not enrolled in Medicare. Currently, if each spouse is over 55 and they have one HSA, they can only make one catch-up contribution. This provision would permit spousal HSA catchup contributions into a single account and alleviate the need for second account with two separate spousal catchup contributions.

Sec. 6. Special rule for certain medical expenses incurred before establishment of health savings account.

Creates a grace period for qualified medical expenses incurred before HSA establishment. This provision would treat HSAs opened within 60 days after gaining coverage under an HDHP as having been opened on the same day as the HDHP. This will alleviate distribution issues associated with account establishment.

Sec. 7. Allowance of bronze and catastrophic plans in connection with health savings accounts.

This provision deems all bronze plans (60% +/- Actuarial Values - AV) and catastrophic plans (Copper plans) to be HSA qualified. This would expand HSA eligibility to a larger audience.

Sec. 8. Allowing all individuals purchasing health insurance in the individual market the option to purchase a lower premium copper plan.

Under current law, only those under age 30 or those who qualify for a hardship exemption are able to purchase catastrophic (copper) health plans, and the risk pool for catastrophic enrollees is segregated from the rest of the market. This section amends the law to allow anyone to purchase a lower-premium catastrophic plan and combines the risk pool with the rest of the plans in the market. The copper plans can be purchased using tax credits.

Sec. 9. Delay of re-imposition of annual fee on health insurance providers.

This delays the annual fee on health insurance providers until 2022.

H.R. 6199: Restoring Access to Medication and Modernizing Health Savings Accounts Act of 2018

Sec. 2. First dollar coverage flexibility for high deductible health plans.

Allows first dollar coverage plan designs for non-preventative coverage up to $250 self-only and $500 family under the deductible. This would include telemedicine, co-pays, office visits, and more.

Sec. 3. Treatment of direct primary care service arrangements.

Allows Direct Primary Care (DPC) without disqualification to HSA eligibility and allows payment of DPC fees as Qualified Medical Expense (QME) so long as the fee does not exceed $150 for self-only or $300 for family coverage.

Sec. 4. Certain employment related services not treated as disqualifying coverage for purposes of health savings accounts.

Allows employer related services (i.e. onsite clinics, etc.) without disqualification to HSA eligibility. This alleviates disqualification from non-permissible coverage for employer provided services.

Sec. 5. Contributions permitted if spouse has a health flexible spending account.

Allows spousal FSA enrollment without impacting HSA eligibility (so long as the FSA isn’t used for HSA participant’s expenses). Alleviates unintended disqualification from non-permissible coverage.

Sec. 6. FSA and HRA terminations or conversions to fund HSAs.

At the employer's discretion, this provision allows employees to convert their FSA and HRA balances into an HSA contribution upon enrolling in a high deductible health plan with an HSA. The conversion amount is capped at $2,650 for individual and $5,300 for family coverage. Any conversion taking place during the same year as an FSA or HRA contribution will count towards an enrollees' HSA contribution for that taxable year. This will provide consumers with an easier conversion to an HSA-qualified HDHP.

Sec. 7. Inclusion of certain over-the-counter medical products as qualified medical expenses.

Allows over-the-counter (OTC) medication purchases to be deemed qualified medical expenses (QMEs) without prescription from a health account and adds feminine and menstrual care products to list of QMEs. This alleviates a minor annoyance for HSA customers looking to use HSA funds to purchase OTC health products.

Sec. 8. Certain amounts paid for physical activity, fitness, and exercise treated as amounts paid for medical care.

Allows for sports and fitness related expenses to be QME up to a limit of $500 a year for an individual and $1,000 a year for a joint return. This includes fitness/gym memberships, participation/instruction in exercise programs, or safety equipment for use in a program of physical exercise or physical activity.

The Path Forward

- The passage of these laws in the U.S. Senate will be more difficult than in the House of Representatives for several reasons, including Senate mechanics, a narrow voting margin, and varying priorities surrounding the midterm elections.
- The Senate is expected to begin considering the laws after the August recess. The earliest that the bills could be passed is right before the end of the fiscal year (September 30), but more likely a vote will occur right before or after the election in November.
- HR. 1476 and HR. 6199 may have more widely spread support than HR. 6311, but it is likely that all three bills will be considered as whole.
- The passage of these laws by the Senate will be a result of bipartisan support, which was received in the House, and grassroots efforts.

About HSA Bank

HSA Bank is a trusted leader in consumer-directed healthcare (CDH), focusing on Health Savings Accounts (HSAs) for over two decades and serving as both the bank and administrator. Discover how we can support your benefits strategy with our comprehensive account-based health benefit solutions that include HSAs, Flexible Spending Accounts (FSAs), Health Reimbursement Arrangements (HRAs), Commuter Benefits, and COBRA Administration.

With a reputation for outstanding service and thought leadership in the CDH space, we offer one platform and one portal for all of our members. HSA Bank inspires nearly 2.7 million members and more than 35,000 employer groups to own “your” health by making it easy to access, understand, and afford healthcare.

As of June 30, 2018, HSA Bank had $7 billion in total footings comprising $5.5 billion in deposit balances and $1.5 billion in assets under administration through linked investment accounts. HSA Bank is a division of Webster Bank, N.A., Member FDIC.

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