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DAVID K. YOUNG,

MPA, CEBS

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HEALTH SPENDING ACCOUNTS (HSA)

A NEW EMPLOYEE BENEFIT TO KNOW ABOUT

Most people in the benefits world now know about the new benefit that was ushered in on January 1st of this year. Known as Health Savings Accounts (HSAs), not to be confused with Health Reimbursement Arrangements (HRAs), Medical Savings Accounts (MSAs) or Flexible Spending Arrangements (FSAs), these new accounts blend some of the best features of previous accounts, but with some parameters that may not fit your benefit needs. There are several issues yet to be addressed by both the IRS and DOL, with the DOL failing to address their guidance on HSAs to-date. Regardless, HSAs are positioned to become the hot new benefit of the future that will create a lot of talk if not action.

The President signed the Medicare Prescription Drug legislation into law on December 8th. An important provision in the bill greatly expands the former Medical Savings Accounts into the new Health Savings Accounts (HSAs). HSAs provide an important and welcome option for many Americans to fund their health care expenses that were not available via the other spending accounts allowed within the law and regulations.

Treasury is committed to ensuring that taxpayers get the full benefit of HSAs as quickly as possible, while the DOL seems less enthusiastic about providing guidance. The Treasury released guidance on many of the basic questions, but left open for future discussion issues such

as how the HSAs will interface with Section 125s concerning the availability of funds based on the annual election, change of family status rules, claims substantiation, etc. The IRS deferred guidance relating to Prop. Treas. Reg. §1.125-2 Q&A 7 which addresses many of these issues currently as they relate to how FSAs should be administered.

So, many providers of health insurance and benefit administrators are taking a cautious approach to HSAs until the Treasury and DOL define these issues and others for employers more specifically.

Within the individual insurance market it would appear much more likely

(See HSAs on page 3)

HEALTH SAVINGS ACCOUNTS VS. HEALTH REIMBURSEMENT ARRANGEMENTS

With all of the talk about HSAs you may be becoming confused as to what is the best choice for your employees or your client's employees. There are many issues to be sorted out as addressed in the article above, but here are

a few points to consider when trying to decide which way to proceed.

First, consider waiting for the dust to settle if you and your employees are currently happy with your health program. The implementation of a high de-

ductible health plan (HDHP) can be a traumatic experience for your employees. Recently a broker expressed his dismay with a group of employees who faced a small rise in the co-pay vs. a sharp premium

See HSAs vs. HRAs on page 3)

SHRM CALLS FOR ACTION

Following the President's State of the Union address, the Society for Human Resource Management (SHRM) called upon the Bush administration and Congress to work together to fulfill their commitment to the American workforce by taking immediate action to ensure the United States has the capability to compete in the global marketplace, create jobs and provide a fair, flexible workplace.

"The promise of job-training grants is a positive investment in the future advancement of thousands of Americans in the workplace," said Susan R. Meisinger, SPHR, president and CEO of SHRM. "However, addressing the health care insurance crisis, making changes to the Fair Labor Standards Act, and bringing clarity to the Family and Medical Leave Act are the actions that will provide the most benefit to today's employees."

SHRM is uniquely tied to the pulse of the American workforce through its more than 175,000 members who lead people strategy for organizations of all sizes and industries throughout the country.

In a recent SHRM survey, HR professionals were asked to prioritize a list of important workplace-related issues they wanted the President to discuss in the State of the Union Speech. Health care topped the list at 52.8 percent, followed by the ability to compete in a global economy (19.9 percent); employment based immigration (9.7 percent); social security (8.5 percent); and pension issues (1.7 percent).

It is with these and other workplace issues in mind that several SHRM members, who are HR executives at leading organizations across the country, watched the State of the Union address with great interest. Several were encouraged by the President's proposed 'Jobs for the 21st Century' and the 'Prisoner Reentry Program' as

possible avenues for expanding America's pool of trained workers.

"For the first time ever, the United States finds itself threatened on multiple fronts in terms of the quality, affordability and competitive edge of its workers," remarked Steve Miranda, a human resources VP for a large high-tech firm. "How we respond as a nation and as individual employers will very likely determine the United States' role in the global stage—both today and for a long time hereafter."

In regards to the President's focus on health care, Walter Grubbs, vice president of human resources, VSP (Vision Service Plan) observed, "The rising cost of health care is a national crisis that impacts both employers and the workforce. There is no simple solution, and improvements will undoubtedly have to come through a combination of strategies."

"We've seen a sincere willingness by the administration to work positively with both employers and employees, but a lot remains to be done" Meisinger added. "We encourage the President and Congress to use this year filled with campaign promises to demonstrate needed changes for the American workforce."

SHRM specifically urged action this year on the following workforce issues:

Allow the Department of Labor to Finalize Proposed FLSA Reform - The white-collar exemptions of the Fair Labor Standards Act govern who is, and who is not, exempt for overtime pay under the law. The current regulations are outdated, unclear and ambiguous. The regulations should be updated to offer proper guidance to enable HR professionals and their employers to correctly implement this wage law, for the benefit of workers.

Address the Health Care Crisis – In the administration of benefits, HR professionals believe that reforms should be based on a model that has built-in incentives to balance both quality and cost efficiencies. As part of efforts to control rising costs, both payers and patients must be informed consumers of health care.

Facilitate the Growth of Employer - Sponsored Pension Plans - HR professionals believe that individuals should have the primary responsibility for providing for their own retirement income. The government should facilitate the financial planning needs of American workers and their families, including voluntary employer education programs. The government should also facilitate the existence and growth of employer-sponsored programs by providing consistent tax incentives, tools to help them correctly determine their current and future liabilities to defined benefit plans, and simplified regulations that encourage employers to provide retirement benefits.

Address Retiree Health Benefits and the ADEA – SHRM urges the EEOC to reverse its prior guidance stating that the reduction or end of retiree health benefits for retirees who become eligible for Medicare conflicts with the Age Discrimination in Employment Act (ADEA). The EEOC should issue new guidance that would allow employers to provide employees with affordable health care when they leave the work place, while containing overall health care costs.

The Society for Human Resource Management (SHRM) is the world's largest association devoted to human resource management. Representing more than 175,000 individual members, the Society's mission is to serve the needs of HR professionals by providing the most essential and comprehensive resources available.

HEALTH SAVINGS ACCOUNTS VS. HEALTH REIMBURSEMENT ARRANGEMENTS CONTINUED FROM PAGE 1

rate increase. One lady ran off to the restroom in tears. Imagine how that the group of employees would have reacted if they had been told that the deductible would go from \$500 to \$1,000 for an individual and \$2,000 for a family. In addition, most employees have become accustomed to RX cards that allow only for a small co-payment each time a prescription is filled. If an employer establishes HSAs, the HDHP cannot allow for RX co-payments until either \$1,000 or \$2,000 deductibles have been met.

If the employer funds the HSA with the premium savings achieved with a HDHP, then the employee will have first dollar coverage up to the amount funded by the employer, but many

employees will have to be educated to see they now have first dollar coverage to help see past the negative of high deductibles.

For this reason HRAs combined with a FSA within a cafeteria plan makes some sense. There is no longer the need to comply with the HDHP plan design required by the new law and regulations. The employer can design the HRA to pay specifically what they want paid from the plan. The employer can retain some or all of the funds not used by the participant. There can even be a vesting schedule associated with the HRA. If the employer wants to phase in the whole concept of HDHPs over a period of time, then that can be done without

creating sticker shock to the employees.

Another concern that employers should watch is the fact that employees can take these accounts from employer to employer like 403(b)s associated with educational institutions. If a program is established that allows for employees to set up their own accounts vs. a single employer trust, it is inviting the same problem that school districts face with dozens and sometime hundreds of investment and insurance vendors wanting a payroll slot. It has raised the need for single point administration services in order to handle the task. For these and other reasons, approach all of the hype of HSAs with caution and study.

(HSA) THE NEW EMPLOYEE BENEFIT CONTINUED FROM PAGE 1

for the market to accelerate offering the accounts to the public. Many of the issues for individual health insurance policies were addressed by the Treasury and should open the door for rapid development of products that will interface with HSAs.

The major provisions of the new law are as follows.

Beginning on January 1, 2004, individuals under the age of 65 are eligible to contribute to an HSA if they have a qualified health plan.

For self-only policies, a qualified health plan must have a minimum deductible of \$1,000 with a \$5,000 cap on out-of-pocket expenses.

For family policies, a qualified health plan must have a minimum deductible of \$2,000 with a \$10,000 cap on out-of-pocket expenses (indexed annually). A family policy cannot provide for a \$1,000 deductible for an individual within the family, but provide for

at least \$2,000 in medical expenses be met by one or more individuals within the family before it pays any benefits.

Preventive care services, as well as coverage for accidents, disability, dental care, vision care, and long-term care is not subject to the deductible.

Individuals may contribute up to 100% of the health plan deductible. The maximum annual contribution is \$2,600 for self-only policies and \$5,150 for family policies.

Individuals age 55 – 65 may make additional "catch-up" contributions of up to \$500 in 2004, increasing to \$1,000 annually in 2009 and thereafter. A married couple can make two catch-up contributions as long as both spouses are at least 55.

Contributions may be made by individuals, family members and employers and are tax deductible, even if the account beneficiary does not itemize. Employer contributions are made on a

pre-tax basis and are not taxable to the employee. Employers will be allowed to offer HSAs through a cafeteria plan.

Investment earnings accrue tax-free.

HSA distributions are tax-free if they are used to pay for qualified medical expenses. Qualified expenses include prescription drugs, qualified long-term care services and long-term care insurance, COBRA coverage, Medicare expenses (but not Medigap), and retiree health expenses for individuals age 65 and older.

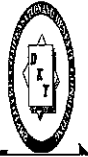
Distributions made for any other purpose are subject to income tax and a 10% penalty. The 10% penalty is waived in the case of death or disability. The 10% penalty is also waived for distributions made by individuals age 65 and older.

Upon death, HSA ownership may transfer to the spouse on a tax-free basis.

DAVID K. YOUNG, CONSULTING

11107 Wurzbach Road
Suite 403
San Antonio, Texas 78230

Phone: 210-558-0999
Fax: 210-641-7771
Email: david@dkyoung.com



David K. Young, Consulting

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DID YOU KNOW YOU ARE IN A MINEFIELD?

Have you asked yourself lately about all the rules and regulations concerning the management of your human resources and employee benefit programs? You are in a minefield that could destroy you and your company.

Do you have an administration need or questions about your:

- Pension or Retirement Plan
- COBRA Compliance and Administration
- Section 125/Cafeteria Plan
- Workers' Compensation/ERISA Plan
- FMLA Compliance
- ADA Compliance
- FLSA Compliance
- Job Descriptions
- Employee Handbook
- Policy & Procedures...?

David K. Young, Consulting has the answers for these areas & others. Call us at 210-558-0999 or email us at david@dkyoung.com for answers to your questions.

GOOD PLAN ADMINISTRATION CAN HELP AVOID COSTLY LAW SUITS

Class action attorneys have discovered employee benefit plans. Company officials, known as fiduciaries, with responsibility for a plan, including retirement plans and self-insured welfare plans are fair game for plaintiff's lawyers. Employers and fiduciaries should take steps to minimize the risk of liability, and a good first step is a fiduciary liability review.

Simple Steps to minimize these problems, employers and other plan fiduciaries should:

Ensure that the plan's fiduciaries have an appropriate background for the task.

Identify every revenue source from which the plan vendor is paid.

Conduct regular fiduciary committee meetings at which plan investments are reviewed and other plan matters

are discussed. Keep accurate meeting minutes.

Analyze whether fees charged by professional managers and investment funds are justified by superior investment performance.

Avoid relying primarily on investment information from a vendor with a financial interest in the investments. Ask the vendor if it receives fees that are not disclosed to the employer.

Clearly outline responsibilities in the plan and trust documents, contracts, summary plan descriptions, board resolutions, etc.

Correct administrative errors as soon as possible after they are found, and consider carefully official guidelines published by the IRS.

Communicate clear plan claims proce-

dures that comply with current law.

Obtain appropriate liability insurance coverage for plan fiduciaries and ensure that the plan's fidelity bond is adequate and paid up.

Develop clear fiduciary procedures and "what if" strategies to assist fiduciaries responsible for plans with employer stock.

Although it may sound like a big project, most of these tasks are simple steps that do not require enormous effort. Unfortunately, however, many fiduciaries just don't get around to doing what's necessary.

ERISA imposes a high standard of duty and care on fiduciaries to find and fix poor administrative practices that directly or indirectly result in lost benefits, and tax laws require careful plan administration.