



Health Savings Accounts

Checklist for State Legislators and

State Insurance Department Officers

Background

Health Savings Accounts (HSAs) are an important part of many consumers' approach to health insurance. However, consumers cannot benefit from an HSA unless they are enrolled in a health plan that meets certain IRS requirements to be an "HSA-qualified" health insurance plan. There are two ways a new state law or regulation could prevent a health plan from being an HSA-qualified plan:

1. The first way would require first-dollar coverage of benefits without an exception for HSA-qualified plans, because HSA-qualified plans must apply the policy deductible to any benefit that is not considered "preventive care."
2. The second way would create a new benefit, or designate an existing benefit, as "preventive care," to which no cost-sharing (i.e., deductible) would apply. This way is more challenging because it is subject to a determination by the IRS as to whether the benefit would be considered "preventive care" and, therefore, exempt from cost-sharing by HSA-qualified insurance plans.

Checklist

1. *First-dollar Coverage Mandate*

___ Does the bill (or proposed regulation) impose a *benefit coverage mandate* on fully-insured plans? If yes, a potential problem for HSAs may exist.

___ Does the mandate require first-dollar coverage of the new benefit? If yes, has legislative or regulatory counsel determined whether the mandate is "preventive care" under IRS rules? If the mandate is not "preventive care"—

___ Does the bill or regulation provide a specific exception from the requirement for first-dollar coverage for HSA-qualified insurance plans so that the insurance policy deductible may be applied to the new benefit? If no, the ABA HSA Council and the state bankers association will likely oppose the bill or regulation, because of the detrimental effect on HSAs.

2. “Preventive Care” Benefit

___ Does the bill (or proposed regulation) require fully-insured plans to cover an existing or new benefit as “preventive care”? If yes, a potential problem for HSAs may exist.

___ Does the benefit meet the definition of “preventive care” as determined by the IRS? (See the IRS notices listed below.) If yes, the benefit may be covered without cost-sharing; if no, then the bill (or proposed regulation) would disqualify HSA plans in the state and make HSA owners ineligible to contribute to their accounts. OR—

___ Does the benefit meet the definition of “preventive care” as determined under the [Affordable Care Act](#)? If yes, then certain services must be covered by HSAs without cost sharing. IRS [Notice 2013-57](#) and [IRS Notice 2019-45](#) clarify that a High Deductible Health Plan (HDHP) used to establish an HSA must provide certain preventive care services or screenings without satisfying the minimum deductible requirement for HSAs. This rule was originally detailed in IRS [Notice 2004-23](#) and clarified in IRS [Notice 2004-50](#).

Sources:

26 U.S.C. § 223(c)(2)

[IRS Notice 2004-23](#)

[IRS Notice 2004-50](#)

[IRS Notice 2013-57](#)

[IRS Notice 2019-45](#)

ACA: <https://www.healthcare.gov/coverage/preventive-care-benefits/>