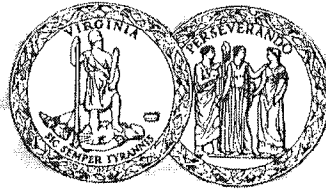


COMMONWEALTH OF VIRGINIA

JACQUELINE K. CUNNINGHAM
COMMISSIONER OF INSURANCE
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE



P.O. BOX 1157
RICHMOND, VIRGINIA 23218
TELEPHONE: (804) 371-9741
TDD/VOICE: (804) 371-9206
<http://www.scc.virginia.gov>

STATE CORPORATION COMMISSION BUREAU OF INSURANCE

December 29, 2017

The Honorable S. Chris Jones
Chairman of the House Committee on Appropriations

The Honorable R. Lee Ware, Jr.
Chairman of the House Committee on Finance

The Honorable Robert D. Orrock, Sr.
Chairman of the House Committee on
Health, Welfare, and Institutions

The Honorable Terry G. Kilgore
Chairman of the House Committee on
Commerce and Labor

The Honorable Thomas K. Norment, Jr.
Co-Chairman of the Senate Committee on Finance

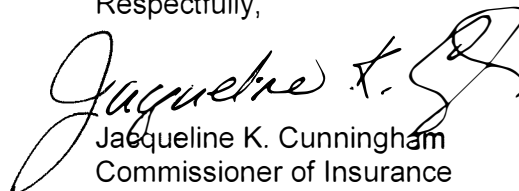
The Honorable Emmett W. Hanger, Jr.
Co-Chairman of the Senate Committee on Finance

The Honorable Stephen D. Newman
Chairman of the Senate Committee on
Education and Health

The Honorable Frank W. Wagner
Chairman of the Senate Committee on
Commerce and Labor

The Bureau of Insurance respectfully submits the Report on High-Deductible Plans as directed by Sections 38.2-5601 through 38.2-5604 of the Code of Virginia.

Respectfully,


Jacqueline K. Cunningham
Commissioner of Insurance

REPORT OF THE
BUREAU OF INSURANCE ON

HIGH-DEDUCTIBLE HEALTH PLANS

TO THE CHAIRS OF HOUSE APPROPRIATIONS; FINANCE;
HEALTH, WELFARE AND INSTITUTIONS; AND COMMERCE
AND LABOR COMMITTEES; AND THE CHAIRS OF SENATE
FINANCE; EDUCATION AND HEALTH; AND COMMERCE AND
LABOR COMMITTEES

COMMONWEALTH OF VIRGINIA
RICHMOND
2017

EXECUTIVE SUMMARY

The Virginia State Corporation Commission (Commission) submits this updated report in accordance with the Virginia Health Savings Account Plan, §§ 38.2-5601 through 38.2-5604 of the Code of Virginia (2017 Report). Health Savings Accounts (HSAs) were created by federal legislation and are designed for use with high-deductible health plans (HDHPs). By law, the Commission is required to provide information on the availability of HDHPs in Virginia and recommendations for legislation that would increase the attractiveness of HSAs or eliminate barriers to their use.

There is considerable activity in the HSA market in Virginia at this time. There are at least 22 companies that offer HDHPs in Virginia, and during calendar year 2016, 52,000 HDHPs were sold covering 187,000 lives. As of year end 2016, there were 133,000 HDHPs in force covering at least 374,000 Virginians. No state legislative or regulatory barriers to the sale of HDHPs have been identified that would restrict the attractiveness of HDHPs to Virginians. The Bureau of Insurance will continue to monitor the ACA and subsequent regulations, as well as other federal legislation and market activity in Virginia. The Bureau of Insurance has no recommendations for legislative changes at this time.

INTRODUCTION

The Virginia Health Savings Account Plan (§§ 38.2-5601 through 38.2-5604 of the Code of Virginia) requires the Commission to report to the chairs of the House Committees on Appropriations, Finance, Health, Welfare and Institutions, and Commerce and Labor and the Senate Committees on Finance, Education and Health, and Commerce and Labor on Health Savings Accounts in Virginia. The Commission is required to provide information on the availability of HDHPs in Virginia and recommendations for legislation that would increase the attractiveness of HSAs or eliminate barriers to their use.

HSAs were created by federal legislation included in the Medicare Prescription Drug Improvement and Modernization Act of 2003. The HSA legislation became effective on January 1, 2004. HSAs are tax-exempt trust or custodial accounts. The account is owned by an individual, and the contributions in the account are used to pay for eligible medical expenses. The HSAs are designed for use with a HDHP.

HDHPs are health insurance plans that provide health coverage after a pre-determined deductible amount has been reached. HDHPs can be offered by a health maintenance organization, health services plan, or an insurer.

The minimum deductible amounts for a HDHP to qualify for use with HSAs are also determined by federal legislation and are indexed annually to adjust for inflation. The annual out-of-pocket expenses are also indexed to adjust for inflation. These amounts are set by federal legislation.

For 2016 and 2017 the amounts were the same:

Minimum Deductible Limits:

\$1,300 for a single person (self-only)

\$2,600 for family coverage

Annual Out-of-Pocket Limits:

\$6,550 for a single person (self-only)

\$13,100 for a family

The amounts for 2018 are changed:

Minimum Deductible Limits

\$1,350 for a single person (self-only)

\$2,700 for family coverage

Annual Out-of-Pocket Limits:

\$6,650 for a single person (self-only)

\$13,300 for a family

BACKGROUND

HSAs are similar to the Archer Medical Savings Accounts (MSAs) that were developed as a way to provide incentives for individuals to become cost conscious in their purchases of medical services. The MSAs were viewed as a tool to provide people with more control over their health care dollars.

The federal legislation that authorized the creation of MSAs was enacted by Congress in 1996 as a four-year demonstration program. The MSA project authorization was included in the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The program began on January 1, 1997, and limited eligibility to self-employed individuals and employees of businesses with no more than 50 employees. The employee or the employer could contribute to the MSA, but both could not do so.

The initial legislation authorized a nationwide limit of 375,000 MSAs until April 1997. The maximum number of MSAs was increased to 600,000 by April 1998 and to 750,000 for the total project. By legislation in 2000, the demonstration project was extended to 2002 and the MSAs were renamed "Archer MSAs" after Congressman Bill Archer who sponsored the amendment that created them. The Job Creation and Worker Assistance Act of 2002 extended Archer MSAs, and it was considered an IRS pilot program subject to future extensions by the United States Treasury Department.

Participants in MSAs made tax-free deposits on a regular basis that were used to cover routine medical care up to the amount of the HDHP deductible. The HDHP then covered the health care expenses above the deductible according to the terms of the policy. The earnings and other interest on the MSA were tax free. A tax deduction could be claimed for the contributions even if there was no itemization of deductions. The contributions could remain in the MSA account from year to year until they were used, and contributions did not have to be made every year.

The covered individual could not have other health insurance coverage. This prohibition did not include coverage for accidental injuries, disability, dental care, vision care, long-term care, benefits related to workers' compensation, tort liabilities, ownership or use of property, a specific disease or illness, or a fixed amount per day (or other period) of hospitalization as first described in Internal Revenue Service Publication 969 (October 1997) Medical Savings Accounts.

The annual minimum deductible amounts and out-of-pocket maximums were included in the federal legislation and were indexed for inflation based on the Consumer Price Index. The annual deductibles were initially at least \$1,500 and not more than \$2,250 for individual coverage and at least \$3,000 and not more than \$4,500 for family coverage. The maximum annual out-of-pocket expenses were set at \$3000 for self-only coverage and \$5,500 for family coverage.

MEDICAL SAVINGS ACCOUNT EXPERIENCE

The number of MSA plans sold nationally was considerably less than contemplated. The number of Virginians that purchased HDHPs that could be used with MSAs was consistent with the numbers on the national level, according to information from the Internal Revenue Service. Approximately 65,000 deductions were taken nationwide for MSAs by 2001.

The number of companies that marketed HDHPs for use with MSAs decreased over time in Virginia. In 1999, there were 22 companies that had policies approved for sale that met the federal requirements for use with MSA accounts. There were at least eight companies that were actively marketing HDHPs in Virginia for use with MSAs in 2002. Of the companies with approved policies prior to 2002, eight insurers discontinued the marketing of the plans by the end of that year. Four companies that had plans approved for sale never marketed the plans in Virginia. Another two companies merged with other companies that were active in the MSA market. The information on company activity in the market is based on surveys of licensed accident and sickness insurers, HMOs, and health services plans operating in Virginia, subsequent computer tracking of forms filings by licensed accident and sickness insurers, health services plans, HMOs, and direct contact with insurance company personnel.

The number of Virginians covered by HDHPs in Virginia in 2002 was estimated to be at least 3,000. Some companies were unable to provide information on the number of individuals covered, particularly those who were no longer offering plans in Virginia.

The MSA experience in Virginia was consistent with the national experience. The HDHPs that received federal recognition as "qualified plans" under the pilot program were contracts that met requirements for sale in Virginia (as major medical contracts) prior to the federal program.

An individual cannot be eligible for an Archer MSA unless the individual was an active participant for any tax year ending before January 1, 2008, or became an active participant after 2007 by reason of coverage under an HDHP of an Archer MSA participating employer.

HEALTH SAVINGS ACCOUNT EXPERIENCE AND THE AVAILABILITY OF HIGH-DEDUCTIBLE PLANS IN VIRGINIA IN 2016

The current level of market activity in Virginia is consistent with national experience. America's Health Insurance Plans (AHIP) is a national trade association whose members provide health care benefits to over 200 million Americans through employer-sponsored coverage, the individual insurance market, and public health programs. According to AHIP's Center for Policy and Research, the number of people covered by

the plans in March 2005 represented a 100% increase in covered lives in the six-month period preceding March 2005. AHIP reported over 1,000,000 people were covered. The AHIP annual census reports have provided the following nationwide coverage each January in subsequent years:

<u>HSA/HDHPs</u>	<u>Covered Individuals</u>
1/2006	3.2 Million
1/2007	4.5 Million
1/2008	6.1 Million
1/2009	8.0 Million
1/2010	10.0 Million
1/2011	11.4 Million
1/2012	13.5 Million
1/2013	15.5 Million
1/2014	17.4 Million
1/2015	19.7 Million
1/2016	20.2 Million

The number of companies providing information to AHIP has fluctuated from 99 in 2005 to 64 by 2015 and down to 59 by 2016. The number of AHIP reported covered lives also has fluctuated. Specifically, AHIP reported that Virginia had 416,484 enrollments as of January 2015 (out of 19.7 million nationally) and 428,677 as of January 2016 (out of 20.2 million nationally). The 2015 and 2016 AHIP census reports both noted that census participation was not received from all health insurers that sell HSA/HDHP insurance coverage or administer HSA/HDHP coverage for self-insured group health plans.

In addition to receiving data from AHIP, the Bureau also conducts its own annual coverage surveys. Information on current activity in the HSA market in Virginia for the 2017 Report of the Bureau was obtained through surveys to companies previously indicating that they were actively offering or considering offering HDHPs. This information was supplemented by information from electronic tracking of forms filings with the Bureau. Information was also obtained through direct contact with company personnel. Based on the information provided to the Bureau, there are at least 22 health insurance companies that offer HDHPs in Virginia that are marketed for use with HSAs, which is the same number of companies offering HDHPs in 2016.

The following companies are currently offering HDHPs in Virginia:

- Atena Health, Inc.
- Aetna Life Insurance Company
- Anthem Health Plans of Virginia, Inc.
- CareFirst BlueChoice, Inc.
- Cigna Health and Life Insurance Company
- Coventry Health Care of Virginia, Inc.
- Federated Mutual Insurance Company
- Group Hospitalization and Medical Services, Inc.
- Healthkeepers, Inc.
- Humana Insurance Company
- Innovation Health Insurance Company
- Innovation Health Plan Inc.
- Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.
- Optima Health Insurance Company
- Optima Health Plan
- Optimum Choice Inc.
- Piedmont Community HealthCare, Inc.
- Piedmont Community HealthCare HMO, Inc.
- UnitedHealthcare Insurance Company
- UnitedHealthcare Life Insurance Company
- UnitedHealthcare of the Mid-Atlantic, Inc.
- UnitedHealthcare Plan of the River Valley, Inc.

Based on the combined results from all companies responding to the Bureau's 2017 survey, the Bureau reports that during 2016, 52,000 policies were sold in Virginia covering 187,000 lives. As of year-end 2016, there were 133,000 HDHPs in force covering 374,000 lives on a cumulative basis (including policies sold in 2016 and other policies remaining in force from prior years).

The following chart compares these survey results with the prior three years:

Year	Policies Sold	Covered Lives	Cumulative Policies in Force at Year End	Cumulative Covered Lives at Year End
2016	52,000	187,000	133,000	374,000
2015	42,000	121,000	125,000	313,000
2014	51,000	122,000	117,000	274,000
2013	7,600	44,800	48,500	198,000

INCREASING THE ATTRACTIVENESS OF HEALTH SAVINGS ACCOUNTS AND ELIMINATING BARRIERS TO THEIR USE

In 2017, as in previous years, the Bureau requested information from the companies offering HDHPs or considering offering the plans in Virginia on efforts that could be taken to increase the attractiveness of HSAs. No suggestions for changes to Virginia requirements were made. Previous company responses have acknowledged that because HDHPs are tied to HSAs and federal legislation, state actions have limited impact on the attractiveness of the product.

Beginning in 2016, federal rules¹ established that individuals with family coverage cannot be responsible for an annual maximum out-of-pocket expense limit that is greater than the Affordable Care Act (ACA) annual maximum out-of-pocket expense limit for self-only coverage, which for 2016 was \$6,850. This required carriers to configure HSA-compatible HDHP family plan designs for 2016 so that no individual within the family is responsible for amounts greater than \$6,850, while ensuring that individuals are subject to the family HDHP minimum deductible of \$2,600. This means that when an HSA is used in conjunction with an HDHP providing family coverage, the HDHP family annual minimum deductible applies, but the annual maximum out-of-pocket expense limit for any individual covered in the family must be subject to the ACA annual maximum out-of-pocket expense limit of \$6,850, instead of the HDHP family annual maximum out-of-pocket expense limit of \$13,100.

The ACA cost-sharing limits also have implications for qualified health plans that the ACA classifies as catastrophic plans. These plans are available for people under age 30 and those that qualify for hardship exemptions. Typically, these plans have lower monthly premiums because the deductibles are equal to the ACA maximum annual out-of-pocket expense limits. Because the ACA cost-sharing limits are higher than the annual maximum out-of-pocket expense limits for HDHPs, catastrophic plans under the ACA cannot qualify to be used as HDHPs for HSAs. The effect of this change on the Virginia market is not known at this time. Other plans may still qualify for use with HSAs, if the cost-sharing requirements meet federal guidelines.

It is not possible, at the present time, to project the long-term impact that the ACA will have on the use of HSAs and HDHPs nationally or in Virginia.

CONCLUSION

There is considerable activity in the HSA market in Virginia at this time. There are at least 22 companies that offer HDHPs in Virginia, and at least 374,000 Virginians were covered by HDHPs at the end of 2016. No state legislative or regulatory barriers to the sale of HDHPs have been identified that would restrict the attractiveness of HDHPs to Virginians. The Bureau of Insurance will continue to monitor the ACA and subsequent regulations, as well as other federal legislation and market activity in Virginia. The Bureau of Insurance has no recommendations for legislative changes at this time.

¹ See 80 Fed. Reg. at 10825.