

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; AND THE CHAIRS OF SENATE FINANCE;
EDUCATION AND HEALTH; AND COMMERCE AND LABOR

COMMONWEALTH OF VIRGINIA
RICHMOND
2016

EXECUTIVE SUMMARY

The Virginia State Corporation Commission (Commission) submits this report in accordance with the Virginia Health Savings Account Plan, §§ 38.2-5601 through 38.2- 5604 of the Code of Virginia. 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.

Based upon information provided to the Commission's Bureau of Insurance (Bureau) during 2016, at least 22 health insurance companies offer HDHPs in Virginia that are marketed for use with HSAs. These companies also report that, during calendar year 2015, 42,000 HDHPs were sold, covering 121,000 lives. As of year-end 2015, there were 136,000 HDHPs in force covering 331,000 lives on a cumulative basis (including policies sold in 2015 and other policies remaining in force from prior years).

In summary, there is considerable activity in the HSA market in Virginia at this time. The Commission has identified no state legislative or regulatory barriers to the sale of HDHPs in Virginia and 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 health savings accounts 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 was 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 medical expenses. The HSAs are designed for use with a HDHP.

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

The minimum annual 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 maximum annual out-of-pocket expense limits are also indexed to adjust for inflation. The amounts for 2016 set by federal legislation were:

Minimum Annual Deductible:
\$1,300 for a single person (self-only)
\$2,600 for family coverage

Maximum Annual Out-of-Pocket Expense Limits:
\$6,550 for a single person (self-only)
\$13,100 for a family

The amounts for 2017 are unchanged:

Minimum Annual Deductible:
\$1,300 for a single person (self-only)
\$2,600 for family coverage

Maximum Annual Out-of-Pocket Expense Limits:
\$6,550 for a single person (self-only)
\$13,100 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 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. It was considered an Internal Revenue Service (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. The 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 IRS Publication 969 (October 1997) Medical Savings Accounts.

The annual minimum deductible amounts and out-of-pocket expense maximum limits 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 expense limits were set at \$3,000 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 IRS. 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, and 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 has been 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 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

The number of companies providing information to AHIP has fluctuated from 99 in 2005 to 80 by 2014, and down to 64 by 2015. The number of AHIP-reported covered lives also has fluctuated. Specifically, AHIP reported that Virginia had 221,740 enrollments as of January 2014 (out of 17.4 million nationally) and 416,484 covered lives as of January 2015 (out of 19.7 million nationally). The 2014 and 2015 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. The Bureau delayed publishing this report for 2016, awaiting the AHIP 2016 census report. The AHIP census report was not completed at the time of this writing. Therefore, updated figures for 2016 are not available.

In addition to receiving data from AHIP, the Bureau also conducts its own annual surveys. Information on current activity in the HSA market in Virginia for the 2016 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; this is a decrease from 27 companies offering HDHPs in 2015.

The following companies are currently offering HDHPs in Virginia:

Aetna Health Inc.
 Aetna Life Insurance Company
 Anthem Health Plans of Virginia, Inc.
 CareFirst BlueChoice, Inc.
 Cigna Health and Life Insurance Company
 Coventry 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.
 Time Insurance Company
 UnitedHealthcare Insurance Company
 UnitedHealthcare Life Insurance Company
 UnitedHealthcare Plan of the River Valley, Inc.

Based on the combined results from all companies responding to the Bureau's 2016 survey, the Bureau reports that during 2015, 42,000 policies were sold, covering 121,000 lives. As of year-end 2015, there were 136,000 HDHPs in force covering 331,000 lives on a cumulative basis (including policies sold in 2015 and other policies remaining in force from prior years).

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

Year	Policies Sold	Covered Lives	Cumulative Policies in Force at Year End	Cumulative Covered Lives at Year End
2015	42,000	121,000	136,000	331,000
2014	51,000	122,000	117,000	274,000
2013	7,600	44,800	48,500	198,800
2012	23,100	50,100	89,600	202,900

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

In 2016, as in previous years, the Bureau requested information from the companies offering HDHPs or considering offering the plans in Virginia regarding 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. Although there was a decrease in the number of reported policies sold in 2015 the number of covered lives for those new sales remained substantially the same as for policies sold in 2014. The cumulative in-force policies and the number of lives covered continue to increase.

Congress passed the Affordable Care Act (ACA) in 2010. The law is comprehensive and its provisions impact health insurance in Virginia and every state. The ACA requires that most Americans maintain minimum essential health insurance coverage or pay a penalty. The current provisions of the ACA allow the continued sale of HDHPs and the use of HSAs where the HSA is used with a HDHP that also qualifies as minimum essential coverage (MEC). Health carriers may offer HDHPs that meet ACA requirements for health insurance coverage which generally are a "bronze or silver" level of coverage.

The ACA includes limits on cost-sharing for enrollees in non-grandfathered health insurance plans. The ACA annual maximum out-of-pocket expense limits for 2017 are \$7,150 for self-only coverage and \$14,300 for family coverage. These limits are higher than the 2017 annual maximum out-of-pocket expense limits for HDHPs based on the IRS adjustment of out-of-pocket limits based on inflation.

Beginning in 2016, federal rules² establish that individuals with family coverage cannot be responsible for an annual maximum out-of-pocket expense limit that is greater than the ACA annual maximum out-of-pocket expense limit for self-only coverage, which for 2016 is \$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.³ 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

¹ A grandfathered health benefit plan or policy is a plan or policy that was in place before March 23, 2010, when the ACA became law.

² See 80 Fed. Reg. at 10825

³ \$2,600

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.

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 331,000 Virginians were covered by HDHPs at the end of 2015. 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.