

# Washington Business Health Update

From the National Business Group on Health

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- **SENATOR ORRIN HATCH'S (R-UT) BILL WOULD ENHANCE HEALTH ACCOUNTS**

Recently, Senator Orrin Hatch (R-UT) and Representative Erik Paulsen (R-MN) introduced bills that would:

- Expand the already existing preventive services "safe harbor" for Health Savings Account (HSAs) (the ability for plans to cover preventive services before participants meet the high deductible) to include more medications;
- Allow both spouses to make catch up contributions to the same HSA account;
- Allow people 65 and over who are only auto-enrolled in Medicare Part A (hospital services only) to contribute to their HSAs as long as they do not enroll in Parts B (outpatient services) or D (prescription drugs);
- Allow employers to permit employees to carry forward up to \$500 in unused Flexible Spending Account (FSA) funds annually;
- Restore the use of health accounts to buy over-the-counter (OTC) medications without prescriptions;
- Allow people to use health accounts to pay for up to \$1,000 of exercise/fitness programs/facilities dues or equipment;
- Allow people to use HSAs to pay premiums for long-term care insurance, COBRA coverage, and HSA-qualified policies; and
- Allow employers to permit employees to make one-time rollovers of up to \$2,250 if they have self-only coverage and \$4,500 if they have family coverage in unused FSA and Health Reimbursement Arrangement (HRA) funds to their HSAs.

**IMPACT ON EMPLOYERS AND EMPLOYEES:** Expanding the preventive services exemption from the HSA deductible to include more medications will increase the assurance that people with HSAs do not forego preventive treatment. It will also reduce future health care, disability, and lost productivity costs as better preventive care translates into fewer avoidable adverse health conditions.

Allowing families to double their catch-up contribution to their eligible spouses' HSAs will help to lower out-of-pocket expenses for older workers and their families who are not yet eligible for Medicare. Similarly, older workers would also have lower out-of-pocket expenses if they could contribute to their accounts even though the federal government automatically enrolled them in Medicare Part A, but their HSA plan remains primary.

Changing the "use-it-or-lose it" rule will encourage more employees to open and contribute larger amounts to their FSAs for health care needs without fear of losing unused money at the end of the year.

Given current economic conditions, job losses, and turnover, allowing employees to keep their own money to cover health care expenses makes sense. In addition, more FSA participation, with higher average elections, will also reduce employers' payroll taxes and free up revenues to potentially expand hiring.

Restoring the ability to use health accounts for OTC medications without prescriptions would make it less costly and burdensome for people to buy them.

Allowing people to use health accounts to pay for up to \$1,000 of exercise/fitness programs/facilities dues or equipment would help employees improve their health, encourage healthier lifestyles, prevent disease and lower future health care costs.

**OUTLOOK:** *The Senate is unlikely to pass a bill to expand health accounts this year. However, the House may pass a few of the bill's provisions as part of its efforts to "replace" the new health care law.*

**BACKGROUND:** Currently, the IRS considers only certain types of prescription drugs as "preventive care" that HSA-qualified plans can cover before people meet the high deductible. These medications include drugs taken by people who have developed risk factors for diseases that have not yet manifested (or not yet become clinically apparent), or to prevent the reoccurrence of diseases from which people currently have recovered.

Under current law, spouses can only deposit contributions into separate HSA accounts even if both spouses are eligible to make catch-up contributions.

Currently, the IRS only allows active employees over age 65 to contribute to HSAs so long as they do not enroll in Medicare. However, the federal government automatically enrolls people in Medicare Part A upon reaching age 65 even though their employers' plans typically will continue to cover their medical expenses until they retire.

Employees must currently "use-or-lose" employee-funded FSA balances during the current calendar year (or at the end of the two and a half month grace period) or forfeit remaining balances back to their employers.

**NATIONAL BUSINESS GROUP ON HEALTH VIEW AND ACTION ON THESE ISSUES:** The National Business Group on Health supports:

- Encouraging employees to seek and obtain evidence-based preventive care and expanding the preventive services exemption from the HSA high deductible to reduce future costly health care, disability costs, and lost productivity due to avoidable adverse health conditions. The National Business Group on Health

played an instrumental role in encouraging the Department of the Treasury/Internal Revenue Service to adopt the initial preventive services safe harbor for HSA plans and suggested the language for preventive medicines that the IRS ultimately used.

- Allowing employers to permit their employees to carry forward unused FSA funds to save larger amounts to fund their anticipated health care needs without fear of unnecessarily losing their money.
- Eliminating barriers to using health accounts to offer affordable, effective benefits that help to lower employees' out-of-pocket health care costs.

The National Business Group on Health sent a letter supporting Senator Hatch's and Representative Paulsen's bill to enhance the use of health accounts.

Link to the letter:

<http://www.businessgrouphealth.org/pdfs/062011%20Support%20Letter%20to%20Senator%20Hatch%20and%20Rep%20Paulsen.pdf>

The National Business Group on Health also sent a letter supporting another bill by Senator Kay Bailey Hutchison (R-KY) and Representative Paulsen that would repeal the OTC prescription requirement for people using health accounts (2011) and the \$2,500 FSA cap (2013).

Link to the letter:

<http://www.businessgrouphealth.org/pdfs/021611%20Support%20Letter%20to%20Senator%20Hutchison%20and%20Rep%20Paulsen.pdf>

### ➤ **HOUSE DEMOCRATS PUSH TO ALLOW MEDICARE TO NEGOTIATE PRESCRIPTION DRUG PRICES**

This week, Representatives Maurice Hinchey (D-NY), Jan Schakowsky (D-IL), Sam Farr (D-CA) and Peter Welch (D-VT) sent a [letter](#), signed by 67 House Democrats, requesting that Speaker John Boehner (R-OH) include a proposal allowing the Secretary of Health and Human Services (HHS) to negotiate Medicare prescription drug prices in legislation to raise the debt ceiling.

Vice President Joe Biden continues hosting meetings this week to raise the debt ceiling with leaders from both parties in the House and the Senate.

**IMPACT ON EMPLOYERS AND EMPLOYEES:** Because of the size of the government as a purchaser, it can use its market power to set lower prices, increasing the risk that prescription drug companies would shift costs onto employers and other private payers to make up for any lost prescription drug revenue from the federal government. The end result could raise prescription drug costs for everyone else but seniors and others in Medicare.

**OUTLOOK:** *It is unlikely that a potential agreement to raise the debt ceiling will give HHS the ability to negotiate Medicare prescription drug prices.*

**BACKGROUND:** The Medicare Modernization Act that created the Medicare Part D prescription drug discount program prohibits the federal government from negotiating bulk rate discounts directly with the prescription drug companies.

Prescription drugs represent one of the fastest growing components of health care spending, with over \$200 billion spent in the U.S. annually, though in absolute dollars it is not the largest by far.

The Congressional Budget Office (CBO) has [stated](#) that government negotiations will not yield significant savings beyond that achieved through the competitive system used by Medicare Part D unless HHS could establish a limited formulary, which is politically very difficult for Medicare.

**NATIONAL BUSINESS GROUP ON HEALTH VIEW AND ACTION ON THESE ISSUES:** The National Business Group on Health is committed to improving access to competitively priced prescription drugs, while assuring safety.

The National Business Group on Health opposes shifting prescription drug costs onto employers, people in employer plans, and private payers to make up for any shortfall caused by allowing the federal government to negotiate prescription drug prices.

If you would like more details on these or other issues or would like a phone briefing on legislation, or want to express concerns about specific issues, please contact Steven Wojcik, Vice President, Public Policy at [wojick@businessgrouphealth.org](mailto:wojick@businessgrouphealth.org) or 202-558-3012. **Also, as part of our "Ask a Benefits Question" service, we are happy to respond within 24 hours to any health benefits question on policy, regulations or legislation.**

*This material is provided for information purposes only and is not a substitute for legal advice.*

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