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House Ways & Means Committee May Impose HSA Documentation Rules

Issue: Tax-Free Payment of Medical Expenses from HSAs

Date: April 8, 2008

Action Taken: The House Ways & Means Committee is planning to mark up (finalize for floor action) on April 9 a "tax day" bill that would, among other things, impose documentation/substantiation requirements on tax-free payments of medical expenses from Health Savings Accounts (HSAs). The HSA documentation/substantiation provision is a pay-for (an offset to make up for the revenue loss in other parts of the bill). The Joint Committee on Tax (JCT) estimates that the HSA documentation/substantiation rules would raise \$485 million over 10 years.

Background: The legislation that the Ways & Means Committee will consider tomorrow (April 9) is a collection of provisions aimed at helping taxpayers. The bill, which has not been introduced and thus has no bill number, is titled "The Taxpayer Assistance and Simplification Act." Its most high-profile provision is one that would prohibit the IRS from using private sector debt collection firms.

Under current law, HSAs (tax-favored savings accounts that are used in conjunction with high deductible health plans (HDHPs) can be used to pay for any "qualified" medical expense. (A "qualified medical expense" is one that would be deductible, without regard to the income threshold, under Internal Revenue Code (IRC) section 213.)

Specifically, the HSA documentation provisions would require trustees of HSAs to report annually both to the Treasury/IRS and to the HSA account owner "the aggregate amount paid or distributed from an HSA that has been determined through independent substantiation...to have been used exclusively for qualified medical expenses." The annual report must also disclose amounts paid by the HSA for which there is no independent substantiation.

The legislative language also specifies that HSA payments that are not substantiated will be "deemed as not used exclusively for qualified medical expenses" and thus will not qualify as a medical expense. As a result, unsubstantiated expenses paid from an HSA – even if they are pure medical expenses – will trigger income and penalty tax liability.

The HSA documentation rules are designed to work in the same way the documentation rules applicable to Flexible Spending Accounts (FSAs) work. The provisions, if they are enacted, will be effective as of January 1, 2009.

AHIA – NAIFA Health & Employee Benefits Position: A requirement that expenses that can be paid on a tax-free basis must be documented and substantiated, particularly in light of its familiarity in the context of FSAs, is potentially reasonable. However, AHIA, NAIFA's advocate in the health insurance and employer-provided benefits arena, is watching this issue closely to be sure the implementation of this rule, if it is enacted, is done in a way that will not be burdensome for HSA/HDHP policyholders.

AHIA/NAIFA Staff Contact: For additional information, please contact Diane Boyle at Dboyle@naifa.org.

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House Passes HSA Documentation Rules

Issue: Tax-Free Payment of Medical Expenses from HSAs

Date: April 16, 2008

Action Taken: As predicted, the House on a mostly party-line vote (238-179) passed The Taxpayer Assistance and Simplification Act of 2008 (H.R. 5719) on April 15 including a provision to require substantiation for withdrawals from health savings accounts.

Background: The \$1 billion-plus bill is largely paid for by the new HSA substantiation rules, with the requirements set to begin after Dec. 31, 2010.

AHIA, NAIFA and other interested parties registered their concerns with the Ways & Means Committee prior to the committee's mark-up of the bill on April 9. As a result, the committee changed the original proposal's effective date (to distributions made after 12/31/10) to give Treasury and the private sector time to work out the difficulties of implementing a documentation and substantiation requirement. AHIA and NAIFA, however, believe that current law substantiation rules—reporting of distributions by the HSA trustee, and by the HSA owner on his/her tax return—are sufficient. Thus, AHIA and NAIFA continue to oppose the House-passed provision, despite the delayed effective date offered as a compromise by the Ways & Means Committee.

AHIA and NAIFA also urged the Senate Finance Committee to oppose the HSA provision. While a positive outcome in the Senate cannot be guaranteed at this point, it does appear that the concerns AHIA and NAIFA discussed with Finance Committee personnel may prevail (although several Democrats there have asked how to make the provision tolerable).

The Administration has issued a Statement of Administration Policy (SAP) recommending a veto of a bill that contains the HSA restrictions.

AHIA – NAIFA Health & Employee Benefits Position: AHIA and NAIFA are opposed to the HSA provision in H.R. 5719 that would create additional complexity and cost to HSA account holders.

AHIA, NAIFA's health and employee benefits advocate, is participating in Senate discussions to be sure the implementation of any additional HSA documentation, if enacted, is done in a way that will not be burdensome and costly for HSA/HDHP policyholders.

The grassroots participation on this issue thus far has been tremendous. Thank you for your involvement. Please watch for additional GovAlerts as this issue heats up.

AHIA/NAIFA Staff Contact: For additional information, please contact Diane Boyle at Dboyle@naifa.org.

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House Subcommittee Holds Hearing on Options for Insurance Regulatory Reform

Chairman Kanjorski Announces Plans to Introduce Bill Creating Office of Insurance Information (OII)

Issue: Insurance Regulatory Reform

Date: April 17, 2008

Action Taken: Yesterday the U.S. House Financial Services Subcommittee on Capital Markets, Insurance, and Government-Sponsored Enterprises held a hearing entitled "Examining Proposals on Insurance Regulatory Reform." The hearing looked at specific proposals to modernize the regulation of insurance. The subcommittee heard from two separate panels of witness. The first panel included Treasury Assistant Secretary for Financial Institutions David G. Nason who discussed the recently unveiled Treasury Blueprint that calls for the creation of an optional federal charter (OFC) for insurance.

Also on the panel was New York Superintendent of Insurance Eric Dinallo, who testified about the progress that has been made by the NAIC to improve and modernize insurance regulation. Testifying on the second panel were several industry representatives who discussed a wide range of potential regulatory reform proposals, including optional federal charter, NARAB II, and the Interstate Compact. Look for a complete report on this hearing in the upcoming edition of [GovTalk](#).

Of great interest at the hearing was Chairman Paul Kanjorski's (D-PA) announcement that he intends to introduce legislation today that would establish an Office of Insurance Information within the Treasury Department. According to Chairman Kanjorski, it has become apparent that "...the federal government lacks the expertise it needs on insurance policy." Kanjorski went on to say that the OII would be structured to fulfill "the functions envisioned in the [Treasury] Blueprint for this office."

Representatives Melissa Bean (D-IL) and Ed Royce (R-CA), sponsors of the [National Insurance Act \(H.R. 3200\)](#), which calls for the establishment of an OFC, both praised Chairman Kanjorski's proposed legislation as "an intermediate step on the road to building a world-class federal insurance regulator as envisioned in [the National Insurance Act]."

Background: Yesterday's hearing was the third in a series held by the Subcommittee examining insurance regulation reform. Prior hearings have focused on understanding the need for regulatory reform, whereas yesterday's hearing focused primarily on *options* for reform. The Subcommittee intends to hold future hearings on this topic, and NAIFA staff will keep you updated on those hearings.

NAIFA's Position: NAIFA supports insurance regulatory reform and modernization that helps American families and businesses achieve financial security. Such proposals should promote consumer protection, streamline agent licensing, improve product speed to market, and improve the competitiveness of the insurance industry.

At its meeting on April 11, the NAIFA Board of Trustees voted to recommend conditional support for the concept of the optional federal charter (OFC) for insurance while continuing to support state-based regulation of insurance. The recommendation now goes to NAIFA's National Council for its consideration and approval during the upcoming [NAIFA Annual Convention and Career Conference](#), September 6-10 in San Diego.

NAIFA's Education and Information Campaign:

- To learn more, please visit www.naifa.org/advocacy/irr
- To submit your views on insurance regulatory reform, please email regreform@naifa.org

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