

HEALTH CARE REFORM AND ABHPS: WHAT DOES THE FUTURE HOLD?

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As the health care reform debate continues into the fall of 2009, employers that offer or are considering consumer-driven, account-based health plans (ABHPs) may wonder how those plans will fare after reform is fully implemented. Based on current legislative proposals, and subject to the terms of an eventual health reform law, it appears ABHPs will continue to play an important role in the post-health reform world.

Background

Briefly described, ABHPs are high-deductible health plans with a related account that's designed to help offset participants' up-front expenses and create a sense of ownership among plan participants. By taking advantage of health savings accounts (HSAs) or health reimbursement arrangements (HRAs), participants can better manage their expenses and save for postretirement medical costs.

Many ABHPs also feature a "wellness" component whereby the employer contributes to participants' accounts when they take positive health-related actions such as completing a health risk assessment, participating in a care management program or receiving preventive care. Overall, the transparency and employee accountability built into the ABHP design aim to encourage participants to make better health and health care decisions.

HSAs can be funded on a pretax basis by the employer, participant or both. Participants own the account and can take the funds with them when they leave employment or retire. What's more, HSAs can earn investment income that is not taxed when used to pay eligible medical expenses. This encourages participants to treat an HSA as a long-term savings vehicle or retirement account.

By contrast, HRAs are employer-funded and employer-owned. Unused funds can be carried over from year to year, and while an employer may continue to make funds for eligible medical expenses available to departing or retiring employees, unused funds generally revert to the employer when an employee leaves or retires.

How is health care reform likely to affect ABHPs, and what can employers expect?

What's Proposed?

Because health reform legislation is still in flux, commentary on its potential impact on ABHPs is purely speculative. However, certain ABHP-related provisions appear in multiple bills, which

suggests the direction Congress may be moving. Relevant provisions include coverage mandates for individuals and employers, along with minimum requirements for the value of coverage and the amount employers must contribute.

The House bill, "America's Affordable Health Choices Act" (H.R. 3200), is farther along than either Senate bill, having been approved in different versions by the House Ways and Means, Education and Labor, and Energy and Commerce Committees. Under this bill, employers must provide coverage or pay a penalty. Individuals would be required to enroll in coverage through their employer or through government-sponsored insurance exchanges, or pay a penalty.

In the Senate, the Health, Education, Labor and Pensions (HELP) Committee bill also includes a pay-or-play requirement. Employers must offer medical plans with a minimum value, to be determined by regulation (based on a "typical" employer plan), and pay at least 60% of the premium. The Senate Finance Committee has not published actual bill language, but its policy papers describe a minimum plan value requirement of 76% — meaning that the lowest-value plan must reimburse at least 76% of participant claims, in aggregate — and a minimum employer contribution of 50%. The Senate has also proposed an individual mandate, whereby individuals must enroll in coverage through their employers or through the individual insurance market.

In its current version, H.R. 3200 would change the rules for account-based plans — including HSAs, HRAs and flexible spending accounts (FSAs) — by making the cost of non-prescription over-the-counter (OTC) medicines ineligible for reimbursement under any of the three types of accounts. This prohibition on reimbursing expenses for OTC drugs would limit this aspect of ABHPs, but would not fundamentally change the usefulness of these arrangements.

What's Still Unclear?

With the congressional recess stretching on, important questions will remain unaddressed until after Labor Day when legislators get back to work. Here's a look at the important ABHP-related issues they'll be considering.

Will there be a tax cap? While it now appears unlikely that there will be a tax imposed on employees who receive total health coverage in excess of a limit, a tax on self-insured employers providing total health coverage in excess of a cap remains a possibility (along with a tax on insurers in the case of insured coverage) — especially in the forthcoming Senate Finance Committee proposal. This provision could include a tax on the "excess" value of all types of health benefits, which would entail aggregating the value of medical, dental, vision and other health-related benefits including health accounts such as FSAs, HRAs and HSAs.

Will high-deductible health plans meet the minimum plan value requirements? The minimum value for employer-sponsored plans will be especially pertinent to HSA-compatible designs. Employers offering such a plan (with or without the account options) will need to pay particular attention to the minimum design and value requirements to make sure their plans don't fall below the minimum threshold. In fact, some employers might need to enrich their current plans to meet minimum plan requirements as set by the final health care reform law.

Implications and Expected Employer Actions

Despite some possible tweaks to the current regulatory treatment of ABHPs, there appears to be an important role for these plans in a post-reform world. Under some scenarios, their role might be broader than it is today. Both employer and individual mandates, for example, could spur more widespread use of ABHPs as both groups seek affordable coverage.

Implications of key reform provisions. Once legislation is enacted, expectations are that most of the 46 million people without health insurance will enroll due to the individual mandate, reforms in the individual insurance market and premium subsidies for low-income individuals. In that environment, many employers that expand health plan eligibility would offer an ABHP as the low-premium option to contain their costs and offer a low-contribution option for individuals who previously declined coverage or were not eligible for the employer's plans.

For people who buy coverage through an exchange, an ABHP would commonly be the lowest-premium option and an especially attractive choice for those who do not currently have health insurance. And to the extent that the federal premium subsidies for low-income families are based on the lowest-premium plan available, there is likely to be a significant increase in the number of people choosing this type of plan.

If the final legislation imposes a penalty on employers for employees who forgo company coverage to purchase insurance through an exchange, it will be advantageous for many employers to offer a low-premium ABHP to keep employees in the company's own plans. If the reform law imposes a tax cap on employers, an ABHP, with its relatively low premiums, may be a way to help companies avoid the tax for health plan values exceeding the cap. Reduction of HSA or HRA contributions may also be a way to help keep ABHPs under a cap.

The bottom line? ABHPs help contain costs, engage participants in the financing of their current and future health care and, through wellness initiatives, encourage healthy life choices and preventive care. Post-reform, many employers will offer ABHPs as a way to provide meaningful choice for employees, as well as to encourage better health and health care decisions.

Under health reform, HSAs may become more common. For example, if HSAs remain tax-protected (as is expected), we may see increased marketing of these accounts as a wealth-accumulation vehicle. What's more, employers may encourage employee participation in an HSA as a way of sustaining their ABHP over the long term and maintaining a diverse risk pool.

So while health reform will likely cause employers to reevaluate their plans and plan participants to assess their coverage alternatives, employers that offer ABHPs today can be encouraged that their general strategy appears to be in line with health care reform parameters. Meanwhile, those that don't offer an ABHP might consider whether their post-reform needs — and those of their employees — would be better served by doing so.