

OVERVIEW

Study of Medical Savings Accounts

Report No. 03-14, October 2003

Summary

We examined the feasibility of medical savings accounts as proposed in various legislative measures regarding workers' compensation, health care insurance, and the Hawaii Employer-Union Health Benefits Trust Fund. Concerned with potential legal, social, and financial impacts of these legislative measures, the 2003 Legislature requested this examination in House Concurrent Resolution No. 93. The report presents our findings on the legal, social, and financial impacts of medical savings accounts.

Generally, medical savings accounts are funds held in trust for individuals insured under high-deductible health insurance policies. Accounts are owned by the insured and used for routine health care expenses; catastrophic medical expenses are covered by their high-deductible health insurance policy. Medical savings accounts are intended to encourage individuals to spend moneys prudently for health care expenses.

Legislation establishing medical savings account arrangements may face legal hurdles under the Employee Retirement Income Security Act (ERISA) and the Hawaii Prepaid Health Care Act. Under ERISA, such legislation may be considered as establishing employee benefit plans and are therefore superseded by the federal law. Under the Hawaii Prepaid Health Care Act, medical savings account insurance products authorized by such legislation may not meet the requirements for approval by the Department of Labor and Industrial Relations.

We found that the legal issues related to medical savings accounts are unresolved and subject to interpretation. We concluded that legislation authorizing the establishment of medical savings accounts will very likely not impair the exemption from ERISA preemption that the Hawaii Prepaid Health Care Act now has. However, the legislation itself may be preempted under ERISA, depending on the nature of the legislation. The Legislature must determine which legal opinion it will rely on when making decisions regarding medical savings accounts.

Some legal uncertainty surrounds medical savings account legislation. This situation arises from the differing readings each legislative measure may have, and can very likely hinder the pace of medical savings account implementation. If passed, enabling legislation only begins the process by which medical savings account health care packages become a reality. These packages require scrutiny by and approval from the insurance commissioner and the Department of Labor and Industrial Relations, including review by the Prepaid Health Care Advisory Council. Largely discretionary, the approval process may raise even more uncertainties.



We also found that, given the limited interest in medical savings accounts nationwide, and very likely in Hawaii, the potential for any negative social and financial impacts of medical savings accounts in Hawaii appears to be minimal. However, cautious consideration of the social and financial impacts of medical savings accounts is warranted. If medical savings accounts are established in Hawaii, the experience of other states may well be repeated here—in which case, medical savings accounts should have little or no impact on health care costs or practices because of relatively low usage.

Recommendations and Response

The Department of Commerce and Consumer Affairs generally agrees with our findings. The department does, however, believe that no additional enabling legislation is required to implement medical savings accounts. It supports its position by citing the state attorney general and the U.S. Department of Labor. We point out that the statements of these two agencies, in opinions given to the department as well as in separate opinions given to the Office of the Auditor, were made in the context of assessing proposed enabling legislation. Therefore, the department's basis for stating that additional enabling legislation is not required is misleading.

The department also comments that all new health plans, not only those with medical savings accounts, must be approved by the director of labor and industrial relations and must meet the requirements of the Hawaii Prepaid Health Care Act. We made a similar observation, but only after noting the attorney general's belief that new health care insurance contracts combined with medical savings accounts can satisfy the requirements of the act—if such contracts provide benefits required under the act and do not conflict with other requirements of the act. As we noted, the attorney general's qualifying statements appear applicable to *any* health care plan proposal presented to the Department of Labor and Industrial Relations.

The Department of Commerce and Consumer Affairs goes further than our finding of minimal potential for any negative social and financial impacts of medical savings accounts. The department believes that medical savings accounts would not have *any* negative social or financial impacts. And, in fact, it believes that medical savings accounts would have a positive impact. However, we stand by our balanced presentation of advantages *and* disadvantages of medical savings accounts.

Finally, we note the attorney general's correction of an editing error in his opinion included in our report as Appendix A. His correcting letter is included in this report in Attachment 2, with the agency response from the Department of Commerce and Consumer Affairs.

Marion M. Higa
State Auditor
State of Hawaii

Office of the Auditor
465 South King Street, Room 500
Honolulu, Hawaii 96813
(808) 587-0800
FAX (808) 587-0830