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A COMMENTARY ON HEALTH SAVINGS ACCOUNTS

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It was over five years ago that Health Savings Accounts (HSAs) were enacted by law as part of the Medicare Prescription Drug Improvement and Modernization Act of 2003 (prescriptions for seniors).

At that time I anticipated the new HSA approach would appeal to many Virginia State Bar members. Serving as the VSB endorsed broker, I have attempted to make the Virginia legal community aware of HSAs through my publications, mailings, and conversations. My purpose has not been to convince, but rather to inform this well-educated population of this emerging approach to health insurance. For a full understanding of the fundamentals of Health Savings Accounts please see www.vsbmic.com/files/hsa_vsbmic_2009.pdf.

It might take volumes to discuss how our country's current health insurance environment evolved. Instead, I will attempt to be brief. In the 1940s federal wage controls prohibited employers from raising employees' salaries; however health insurance could be added as a benefit. Employers could deduct the cost of this benefit and it was not taxable to the employer. Thus, the employer-provided health insurance system grew through the decades. Many will agree that consumers have become insulated from health costs over time. Our employer-provided health insurance system has been directed by our tax code and promoted utilization with little incentive to contain costs. We experienced increasing health insurance premiums annually. Success to curtail these increases through "Managed Care" was short-lived in the 1990's, and in fact, may have actually contributed to an increase in health care costs by insuring the more discretionary items. Escalating health insurance premiums again became the norm. Since the new century began health insurance premiums have dramatically outpaced most other costs. Both wages and profits increased roughly 20-25% from 2000 to 2007, while health insurance premiums doubled.

As a reminder, the Health Savings Account approach is a combination of a high deductible insurance policy combined with an IRA-like account for health care. Contributions to HSAs are on a pre-tax basis. Money can be withdrawn to pay for a broad definition of health services. In addition, money in the HSA accumulates tax free from year to year.

Logically, because of the high deductible, the HSA approach has been selected by those who anticipate limited medical expenses. Conversely, I have seen those with chronic conditions, and those with high expected medical costs, including those on numerous expensive brand name prescriptions, prefer the more traditional health insurance product that requires either a smaller deductible or copayments.

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The Health Savings Account approach has also appealed to higher wage earners who are in the high tax brackets. According to the United States Government Accountability Office, among tax filers between the ages of 19 and 64 the average adjusted gross income (AGI) in 2005 for filers with an HSA was about \$139,000 compared with an AGI of \$57,000 for all other filers. Thus, it may be fair to say to some extent HSAs have been selected by those with above average health and above average wealth.

Today a “one size fits all” approach to health insurance does not appeal to many law firms. Stereotypically, the partners or owners of a firm will often consider the HSA approach as they can 1) often handle the higher deductible; 2) find this approach more tax advantageous; and 3) have a strong desire to send fewer dollars to the health insurance company. Staff members continue to gravitate to typical insurance products with financial predictability, but many are beginning to consider the value of a lower premium product.

Nationally, the number of people covered by the Health Savings Account approach continues to increase each January according to America's Health Insurance Plans and shows no sign of slowing.

- 2006 3.2 million
- 2007 4.5 million
- 2008 6.1 million

In recent years I have told people that the average health insurance deductible in this country was \$500. Some suggest that it is now \$1,000. As the \$1,000 deductible becomes more common (with often 20% coinsurance required) more attorneys and staff members may begin to consider the Health Savings Account approach with a deductible that may be considered manageable (e.g. \$1,500 or \$3,000 with 0% coinsurance).

We are on an unsustainable path if the price of health insurance continues to outpace other costs by a factor of four. Law firms and sole practitioners will continue to evaluate buy-down options which include increased deductibles, copayments, coinsurance, and out-of-pocket limits. They will also continue to assess provider networks associated with health insurance. As groups move further and further away from a low dollar copayment plan, I anticipate the deductibles associated with the tax-favored HSA approach will be given greater consideration by more people.

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