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The House of Representatives passed two pieces of legislation that, among other things, purport to improve and “modernize” health savings accounts (“HSAs”).

Summary of Proposed Changes

H.R. 6199 would:

- Exclude a direct primary care service arrangement from being treated as a disqualifying coverage for purposes of HSA eligibility. This would apply so long as the aggregate fees for all services do not exceed \$150/month (or \$250/month for coverage for more than one individual).
- This would not include: procedures that require anesthesia, prescription drugs (other than vaccines), and laboratory services not typically administered in a primary care setting.
- This would permit reimbursement from the HSA on a tax-free basis for direct primary care service arrangements subject to the monthly dollar limits described above. However, such fees are reportable for information purposes on the Form W-2.

The two bills are:

- H.R. 6199, Restoring Access to Medication and Modernizing Health Savings Accounts Act of 2018 (for a copy, visit <https://www.congress.gov/115/bills/hr6199/BILLS-115hr6199eh.pdf>)
- H.R. 6311, Increasing Access to Lower Premium Plans and Expanding Health Savings Accounts Act of 2018 (for a copy, visit <https://www.congress.gov/115/bills/hr6311/BILLS-115hr6311eh.pdf>)

While the bills call for significant changes to the current rules affecting HSAs, the specific details are very different.

- Permit individuals to maintain HSA eligibility when, in connection with employment, the individual (or the individual's spouse) receives (or is eligible to receive) "qualified items and services" at:
 - A health care facility located at a facility of the employer operated primarily for the benefit of the employer's employees (e.g., an onsite clinic)
 - Health care facilities located within supermarkets, pharmacies, or similar retail locations
 - For purposes of the above, "qualified items and services" are limited to the following:
 - Physical examinations,
 - Immunizations,
 - Drugs other than prescribed drugs,
 - Treatment for injuries occurring during employment,
 - Drug testing as a requirement of employment.
 - Hearing and visions screenings, and
 - Other similar items and services that do not provide significant medical benefits.
 - Treat a spouse's traditional health FSA coverage as non-disqualifying coverage for purposes of an employee's HSA eligibility in certain instances.
 - Create additional flexibility for health FSA and HRA conversions to fund HSAs including a conversion to HSA compatible arrangements for the remainder for the year.
 - Expand the definition of a qualified expense for purposes of health FSA, HRA, and HSA reimbursement to include certain menstrual care products and qualified sports and fitness expenses up to \$500 (or \$1,000 family) (e.g., gym memberships).

H.R. 6311 would:

- With respect to HSAs:
 - Expand HSA eligibility to age-based Medicare Part A eligible individuals (i.e., individuals age 65 and older).
 - Increase the maximum annual HSA contribution to match the out-of-pocket limit (as opposed to an IRS defined limit usually well below the maximum out of pocket).
 - Permit both spouses to make catch-up contributions to a single HSA (as opposed to requiring each spouse to have his/her own HSA to make a catch-up contribution).
 - Permit Bronze and Catastrophic plans to qualify as a high deductible health plan ("HDHP") for purposes of HSA eligibility.
 - Permit reimbursement of qualified medical expenses incurred within a 60-day period prior to the establishment of the HSA.
- Create a "Premium Copper Plan" in the individual Marketplace.
- Increase the health FSA carryforward from a maximum of \$500 to the remaining account balance at the end of the year.
- Delay reinstatement of the Annual Fee on Health Insurance Carriers until January 1, 2022.

Both pieces of legislation have been sent to the Senate for consideration. Whether the Senate will take up these bills, let alone approve them "as is," remains uncertain. There appears to be some bi-partisan appetite to loosen the current HSA rules, which means it is possible that we may see changes to these arrangements, which could be effective as early as January 1, 2019. We will continue to keep you apprised.