

Know the difference between ACA compliance and HSA compatibility

To mitigate the effects of the impending Cadillac tax, many employers are shifting to high-deductible health plans with health savings accounts. However, advisers and their employer clients must make certain a plan is both HSA compatible and compliant with the Affordable Care Act — something that's not necessarily true.

"Don't assume that if it's compliant with one law that it's compliant with another," says Karen McLeese, vice president of employee benefit regulatory affairs at CBIZ. One difference between being ACA compliant and HSA compatible is the out-of-pocket limits. For HSAs, the limits are \$6,550 for individuals and \$13,100 for families for 2016. The ACA limits are \$6,850 for single plans and \$13,700 for family plans.

"You will hit the HSA limit before you hit the ACA out-of-pocket limit," says Stacy Barrow, partner at Marathas Barrow & Weatherhead LLP. "You'd be surprised how many plans look HSA compatible but aren't."

No one can be subject to more than the single-plan maximum under the ACA. "The self-only maximum annual limitation on cost-sharing applies to each individual, regardless of whether the individual is enrolled in self-only coverage or in coverage other than self-only," according to the Department of Labor. This applies to "all non-grandfathered group health plans, including non-grandfathered self-insured and large group health plans."

The ACA and HSA limits are released each year at different times — making annual plan evaluations a good idea, says McLeese. "They don't come out at the same time, that's another issue," she says. "It's certainly something the plan wants to review every year."

Complex issue

The confusion isn't limited to employers, says Zack Pace, who's had major insurers ask him for clarification. "If you are trying to create an HSA-compatible plan, you have to be very careful that you check off every single box on the checklist," says Pace, senior vice president of benefits consulting at CBIZ. "Everyone should be very, very diligent in the setup."

Fully insured plans are in a better position than self-insured plans, he adds, as fully insured plans can't be as customized.

Health savings accounts have been around since the Medicare Modernization Act of 2003, which created HSAs. Add in the complexity of the ACA, and employers are looking to consultants to help them setup these plans, Pace says.

There's been much adoption of HDHPs with HSAs as employers prepared for the 2018 Cadillac tax — it will be interesting to see if adoption slows now that the excise tax has been delayed two years, he says. Benchmarking data can help to answer the question of what was driving the move toward HDHPs. Was it the Cadillac tax or simply to reduce costs, Pace says. "It probably was a little bit of both."

Not insurmountable

While challenging, ensuring a plan is both ACA compliant and HSA compatible is achievable, says John Garner, chief compliance officer at Bolton & Company. "It's inconvenient that there are separate limits and it's confusing because they're close enough," he says. "But it's not nearly as big of a deal as we were faced with a couple of years ago on HSAs and the whole question of preventative care. That was a huge issue."

The definition of preventative care under the ACA was broader than it was for HSAs, which raised the question of whether a plan could comply with both sets of rules, Garner says. The IRS resolved the issue with a notice released in 2013 to expand the definition of preventative care, he says.

But that's how health reform has been going — continual change — and those frequent alterations are a major source of frustration, Garner says.

The ACA has been revamped since it first became law, with a couple of big changes that came in 2015. Along with the Cadillac tax delay, which was included in the \$1.1 trillion spending package President Obama signed into law Dec. 18, 2015, Congress repealed the expanded definition of a small employer.

Both the House and Senate passed legislation to maintain the current definition of a small employer as 1-50 employees. The ACA had called for increasing the definition to 1-100 employees starting Jan. 1, 2016. Obama signed the Protecting Affordable Coverage for Employees Act in October to rescind the expanded definition.