

October 30, 2006

MEMORANDUM TO CLIENTS

RE: Health Opportunity Patient Empowerment Act of 2006

On September 27, 2006, the Ways and Means Committee, on a party-line vote, approved the Health Opportunity Patient Empowerment Act of 2006 (H.R. 6134). The bill modifies the HSA rules to make HSAs more attractive. Specifically, the bill does the following, effective for taxable years after December 31, 2006:

- Permits an individual to transfer the balance remaining in his or her FSA or HRA account as of September 21, 2006 (or, if less, the balance on the date of the transfer) to a new HSA. The transfer must be made before January 1, 2012.
- Modifies the limit on contributions to HSAs, so that it is not limited to the annual deductible of the high deductible health plan (HDHP); instead, contributions would be limited only by indexed dollar amount (\$2,850 self-only; \$5,650 family for 2007).
- Requires the Secretary of Treasury to announce the cost-of-living adjustments applicable to HSAs by June 1 of each year.
- Allows individuals who become covered by a HDHP after January to contribute up to the full annual limit, even if they were only eligible individuals for a portion of the taxable year; however, if they do not maintain an HDHP for the 12-month period beginning with the last month of year (except in the case of death or disability), then they must pay tax on the HSA contributions plus a 10% penalty.
- Allows employers to make contributions to HSAs on behalf of non-highly compensated employees in higher amounts (or higher percentages of deductibles) than to highly compensated employees without violating the comparable contribution rules.
- Allows individuals to make a one-time distribution to rollover amounts from an IRA to an HSA, subject to the HSA contribution limit.

This is the first step on the legislative process, and the legislative year is drawing to a close. Next steps would be to have the entire House of Representatives vote on the bill and then have the bill sent over to the Senate for action. Both the House and the Senate are currently in recess and will not return until after the November elections. This means that there likely will not be enough time to take up this bill during this Congress. Any outstanding bills that remain at the end of this Congress, including this bill, will not carry over to the next Congress and will have to be reintroduced. If the Democrats control the House in the next Congress, it is highly unlikely that this bill would be favorably reported out of the House Ways and Means Committee, given the Democrats' opposition to this bill in Committee this year.

If you wish to discuss this guidance or other HSA legislative proposals, please contact Bill Sweetnam, Brigen Winters or Chris Keller at (202) 857-0620.