

**SUBJECT:** Authorizing the establishment of medical savings accounts

**COMMITTEE:** Insurance — committee substitute recommended

**VOTE:** 7 ayes — Smithee, Duncan, Averitt, De La Garza, Driver, Dutton, Shields  
0 nays  
2 absent — Counts, Dutton

**WITNESSES:** For — Dorothy Thorsen, Golden Rule; Janet A. Stokes, Texas Association of Health Underwriters; Connie Barron, Texas Medical Association  
Against — None  
On — Rhonda Myron, Texas Department of Insurance

**DIGEST:** CSHB 129 would authorize the establishment of medical savings account programs by individuals or by employers for the benefit of employees. The program could provide for a health plan to cover account holders and their dependents.

A medical savings account program would have to provide for the contribution by the account holder or the employer and for an account administrator. An employer would be required to make an annual contribution of at least \$1,000 for the benefit of each employee who is an account holder, and to inform in writing each employee of the federal tax consequences of the contributions before a contribution is made. The employer could make an interest-free advance to an employee for an eligible expense that exceeds the money in the employee's account.

**Account administration.** An account administrator would be the fiduciary of the account holder and could be a bank, savings and loan association, savings bank, credit union, authorized trust company, insurance company, group hospital service corporation, HMO, authorized third-party administrator, certified public accountant or an employer that operates a self-insured ERISA health plan or participates in the medical savings

account program. Account administrators who are not employers could charge fees not to exceed 10 percent of the yearly amount deposited.

The account administrator would be required to issue identification cards to account holders that identify the account holder and dependents for whom eligible expenses could be paid, the name, address and phone number of the account administrator and whether the account holder is covered by a program health plan.

**Use of the account.** The account administrator would be required to use the account money to pay or reimburse for eligible medical expenses or to purchase a health plan to cover the account holder and dependents.

A medical expense would be eligible for payment if it was a medical expense as defined by the Internal Revenue Service and the expense was not otherwise provided for under any health plan or insurance policy, including a motor vehicle or workers' compensation policy.

An account holder would commit a Class C misdemeanor, punishable by a fine of up to \$500, by submitting false or misleading claims for unreimbursable expenses or attempting to seek reimbursement for an expense that was not incurred.

The account administrator could request documents to verify the eligibility of a claim and would be required to pay the claim within 30 days after the date the claim is submitted or the date the documents arrived.

**Health plan.** A health plan would be defined as any plan that provides benefits for health care services or for medical or surgical expenses, including an individual, group, blanket or franchise insurance policy, HMO coverage, a group hospital service contract or an self-insured, employer-funded health benefit plan.

Health plans in a medical savings account program would not be subject to mandated benefits as required by law if the plan was purchased by an employer or by an account administrator of a MSA program established by an employer. If applicable, a health plan would be otherwise subject to

requirements under the Small Employer Health Insurance Availability Act (Insurance Code Chapter 26).

A hospital or emergency clinic could not refuse services on the basis of ability to pay to individuals who presented an MSA identification card indicating health plan coverage subject to annual individual deductibles of not more than \$2,000. A hospital could delay providing services up to 24 hours to confirm an individual's participation in a program.

**Account transfers.** Money and interest in the account would be transferred to another account established under the act on request by the account holder. The account administrator would be required to transfer the account on death of an account holder to a dependent named as successor or to the estate of the deceased account holder. An employer's obligation to contribute to the account would be terminated but the account administrator could continue to administer the account for the dependent.

If the account holder ceased employment, the administrator would be required to pay within 60 days any money in the account to the account holder or another account requested by the account holder. The account administrator could continue to administer the account upon account holder request.

The bill would take immediate effect if approved by two thirds of the membership of each house.

**SUPPORTERS  
SAY:**

CSHB 129 would establish an additional health care option for individuals and employers at no cost to the state, and could especially benefit small and medium-sized businesses that cannot afford to provide comprehensive coverage to employees. Medical savings account (MSA) programs offer Texas another strategy to reduce the high number of uninsured Texans.

In a typical MSA program an employer would provide employee health benefits that would cover unexpected, high cost medical care (catastrophic care benefits) and account contributions to pay for routine medical care costs. Health benefit plans, however, would not be limited to catastrophic care plans, and employers could offer more substantial coverage.

Catastrophic care plans, low-benefit health care plans and medical savings accounts are better than no coverage at all and offer sufficient financial assistance for normally health individuals. Even if the employer did not provide any health benefits, a \$1,000 per year contribution to a medical savings account could go a long way to meet an individual's or family's health care expenses.

MSAs help put individuals in control of their health care purchases and spending. Paying their own bills allows consumers to choose whatever doctor they want or obtain any tests or services they need that could otherwise be denied by an insurance or HMO plan. Paying for care also encourages people to take better care of themselves and to use preventive and primary care. MSAs also allow individuals, instead of insurance companies, to accrue investment earnings on unspent funds.

MSAs also could be used by individuals to buy the insurance coverage they want, including individually underwritten policies, insurance coverage through a spouse's employer or continuing a policy under a former employer. Unlike employer-provided health insurance benefits, when employees leave a job, the money in the account stays with them.

MSAs can help stem the rising costs of employer-provided health benefits, by curbing utilization of expensive or unnecessary services. Out-of-pocket payment for health care services is a strong incentive for seeking appropriate and lower-cost health care services. People are more careful with how they spend their own money than they are when spending someone else's. Part of the problem with many employer-provided health plans is that patients think they are mostly spending "someone else's money" when they go to a doctor, shifting the costs of health care expenses onto employers. MSAs also would reduce or eliminate paperwork for health care providers and employers.

Most employers want to provide the best coverage they can for their valued employees, and many would most likely exceed the minimum contribution requirements or provide the best health benefits they can afford. CSHB 129 would not increase the likelihood of employers providing fewer or no benefits because they are under no requirement now to provide employee health benefits.

The state has very few options for allowing MSA tax credits or exemptions for employers or individuals because Texas does not impose an income tax. At best the state could offer corporations a tax credit from the franchise tax obligations. Passage of CSHB 129, however, would allow Texans to immediately avail themselves of any federal tax credit provisions that may be enacted. Until that time, employees would fare better from paying taxes on an income increase through employer MSA contributions than by receiving no income increase at all to cover health care expenses. CSHB 129 would require employers to notify employees of the potential tax consequences.

Medical savings account administrators would be regulated by existing state and federal laws governing their licensure or certification. Employers who embezzle MSA funds or who deceive employees could be taken to court.

OPPONENTS  
SAY:

Individuals and employers would get little benefit from an MSA without tax exemptions for the accounts. The bill might actually lead to a reduction in employer-provided health coverage and an increase in the number of uninsured or underinsured Texans. Texas needs to improve the effectiveness and affordability of existing health benefit plans before establishing an alternative that may only benefit account administrators.

Individuals would have no incentive to establish an MSA on their own and encumber the fees and requirements of accounts administration without a tax exemption for account contributions. People who want to save money for medical expenses can do so now in a regular savings account or money market account. Employer-provided MSAs would increase an individual's federal income liability.

Employers could use MSAs as a way of providing less coverage for employees, by substituting comprehensive coverage with high-deductible plans that provide fewer benefits, or by providing no coverage at all. MSAs without corresponding health care plans are false benefits — it is highly unlikely that employer contributions would be sufficient to cover any major medical expense. Employers would only be required to contribute \$1,000 a year.

CSHB 129's minimum requirements would not provide sufficient coverage or financial assistance for most employees. Health benefit plans would not be required to provide a minimum level of coverage and would most likely not cover needed acute and preventive care. Consumers would tend to delay seeking treatment until severe symptoms or complications arise. A high medical expense could wipe out both the medical savings account and personal savings of most employees. MSAs would only benefit healthy employees, higher-income employees with plenty of disposable income or employees whose employers make high contributions or provide good corresponding benefits.

The benefits of consumer-controlled spending are overblown. Consumers actually have very little control, if any, over the occurrence of birth defects, illnesses or accidents, over the price of medicine and technology and over physician diagnosis, treatment and referrals. Most consumers do not seek health care unless they have to, and MSA programs would most likely give them little help in paying for their health expenses. Freedom to choose a doctor is meaningless if the patient does not have the ability to pay for needed care.

MSAs alone or in tandem with a health care plan could actually encourage misuse of health care services. Employees would be "given" money to spend on health care and may spend money on non-essential health services or consultations, leaving nothing for unanticipated emergencies or illnesses. Public hospitals and providers would still be spending tax dollars on emergency care for uninsured or underinsured citizens.

CSHB 129 provides no regulatory monitoring or controls over the establishment and use of medical savings account programs, and no complaint center, recourse or penalties against employers or account administrators who violate the act or deceive or embezzle account holders.

**OTHER  
OPPONENTS  
SAY:**

Limiting an individual's or employee's access to money in an MSA to medical payments would reduce the potential benefit of an MSA. Account holders would be more encouraged to use health care services wisely if they could benefit at the end of the year by accessing some of the savings for other purposes. Also, an MSA would be of no help to an individual or family that experiences a non-medical emergency or high expense (such as

education expense or loss of a wage earner). Many MSA plans discussed at the federal level would include provisions for individuals to use a portion of the money saved at the end of the year for other purposes.

NOTES:

The committee substitute changed the original bill as follows:

- added provisions defining dependents and health plans,
- removed brokers and attorneys from the list of persons allowed to be account administrators,
- allowed individuals as well as employers to establish an MSA program,
- required employers to contribute \$1,000 annually,
- specified identification card information,
- added penalties for account holder violations,
- added prompt claim payment requirements,
- removed MSA health plans from mandated benefit requirements,
- expanded account transfer procedures and
- required hospitals to provide services to individuals who present identification cards with health plans indicated.

A related bill, HB 1808 by Shields, which would allow corporations to claim credit against franchise tax payments for contributions to employee medical savings accounts, has been referred to a Ways and Means subcommittee.