



# HSA's and Their Tricky Rules



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September 30, 2020

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# Health Savings Account (HSA)

## HIGHLIGHTS



### What is an HSA?

Tax-exempt trust or custodial account owned by the individual



### What is it for?

May be used for eligible medical expenses of the individual, spouse & dependents



### Are there any special requirements?

Must be covered by a high deductible health plan (HDHP) as defined by law



## Who is eligible to establish an HSA?

### Anyone who is:

- Covered by an HDHP
- Not **enrolled** in Medicare
  - Watch out for retroactive enrollment due to events like the start of Social Security distributions
- Not covered under other non-HDHP insurance or health plan
- Not a tax dependent of another individual

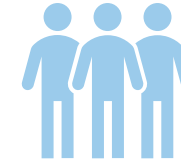
Other health insurance or group health plans does not include separate dental plans, separate vision plans, specific disease or illness insurance, accident and disability insurance and long-term care insurance.

## HDHP



### Self-Only Coverage

For 2021, self-only HDHP coverage must have an annual deductible of \$1,400 and an out-of-pocket maximum of no more than \$7,000



### Family Coverage

For 2021, family HDHP coverage must have an annual deductible of \$2,800 and an out-of-pocket maximum of no more than \$14,000

- Don't forget to imbed ACA out-of-pocket maximum of \$8,550 for individuals covered under a family plan

### HSA qualified HDHP out-of-pocket maximum interaction with the ACA's out-of-pocket maximum

#### HSA qualified HDHP out-of-pocket maximums for 2021

- Self-Only Coverage = \$7,000
- Family Coverage = \$14,000

#### ACA out-of-pocket maximums for 2021

- Self-Only Coverage = \$8,550
- Family Coverage = \$17,100

HHS final rule states that the annual limitation on cost-sharing for self-only coverage applies to all individuals regardless of whether the individual is **covered by a self-only plan or is covered by a plan that is other than self-only**

- An individual's cost-sharing for essential health benefits may never exceed the self-only annual limitation on cost-sharing
- Mandatory embedding of the ACA's out-of-pocket maximum for family HDHP

Under a Family HDHP, no single individual can incur a MOOP greater than \$8,550 because of the ACA limits

## HDHP

### Self-Only Coverage

Maximum contribution of 2021 = \$3,600

### Family Coverage

Maximum contribution of 2021 = \$7,200

### “Catch-Up” Contributions

Age 55 and older  
by the end of the tax year = \$1,000

### Source of Contributions

Employer, or employee, or both  
(or anyone else)

### LAST “MONTH” RULE

“An individual may contribute the entire annual limit when first eligible for an HSA as long as you are eligible on the 1<sup>st</sup> day of the last month of the tax year (December 1<sup>st</sup> for most of us)”



However, if you join mid-year and contribute the maximum amount to your HSA, you must remain eligible for **at least 12 months after the last day of the last month of that tax year** (Dec. 31 for most taxpayers), or you will be subject to taxes and penalties on the amount you contributed.



# HSA Funds

## **HSA funds may be invested & can grow on a “tax-qualified” basis**

- Funds can roll over from year-to-year and you keep the money even if you change jobs
- Investment options often include a minimum amount

## **HSA funds may be used for “qualified” out-of-pocket medical expenses**

- Code 213(d) – medical expenses incurred by the employee, spouse and/or dependents
- Dependent is a child to age 19 or age 23 who is a full-time student (Note: this is different from the medial plan coverage definition of dependent)

## **Claims are “Self-adjudicated”**

- Save your receipt in case of an IRS audit

## Tax Qualified

### If taken for qualified medical expenses

- If non-qualified expenses, income tax and 20% penalty apply

**May only be used for expenses incurred on or after the date the HSA was established**

**May use funds for expenses incurred in a prior year if the HSA was in existence on or after the date the expense was incurred**

Distributions for non-qualified expenses for age 65 or older: ordinary income tax will apply but the 20% penalty does not apply.

## EXAMPLES

- Most medical care that is subject to your deductible
  - Copays
  - Coinsurance
  - Doctor visits
  - Inpatient or outpatient treatment
- Prescription and **OTC drugs**
- Insulin (with or without a prescription)
- Dental and vision care

### Select insurance premiums:

- COBRA
- Qualified long-term care insurance
- Health insurance premiums paid while receiving unemployment benefits
- Health insurance after you turn 65 except for a Medicare supplemental policy

# Non-Qualified Medical Expenses

## EXAMPLES

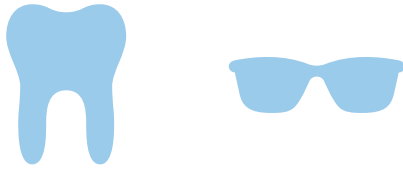


- Insurance premiums (other than the exceptions listed on the previous slide)
- Surgery purely for cosmetic reasons
- Expenses covered by another insurance plan
- General health items such as tissues, toiletries and hand sanitizer

## Health Flexible Spending Arrangement (health FSA)

- A general purpose health FSA will reimburse all 213(d) (medical) otherwise unreimbursed, out-of-pocket expenses (except for individual premiums)
- Because it provides for reimbursement of medical expenses before the minimum HDHP deductible has been satisfied, the health FSA is disqualifying coverage for HSA purposes
- Typically, the health FSA will provide for reimbursement for spouse and dependent medical expenses
  - This means an employee's spouse would not be eligible for an HSA even if his or her employer provides a qualifying HDHP

## Designing an HSA compatible health FSA



### Limited Purpose Health FSA

Provides reimbursement for dental and vision expenses only



### Post – Deductible Health FSA

Provides reimbursement after the minimum annual deductible has been satisfied

- The health FSA could reference the HDHP deductible or could be designed to pay after the minimum statutory deductible is satisfied

## Health Flexible Spending Arrangement (Health FSA)

- The health FSA may have grace period of up to 75 days following the end of the plan year
- Claims incurred during the grace period may be reimbursed from the prior plan year funds (if available)
- For a calendar-year health FSA: If the health FSA is “general purpose”, the covered individual will not be HSA-eligible until April 1st (assuming the grace period is the full 75-days) if there are any funds remaining in the FSA as determined on an cash accounting basis
  - If there’s a \$0 balance on the last day of the plan year, the grace period will not impact HSA contribution eligibility
  - Because the health FSA provides coverage before the minimum HDHP deductible has been satisfied and the individual must be HSA-eligible on the 1<sup>st</sup> day of the month

The individual could contribute 9/12ths of the annual maximum – unless the individual follows the “last month” rule.

## Designing an HSA Compliant Grace Period

- The plan may be amended (before the end of the plan year) to provide a mandatory limited purpose health FSA where only dental and vision care expenses incurred during the grace period will be reimbursed
- Plan may be amended whereby anyone that elects coverage under the HSA qualified HDHP is automatically terminated from participation in the FSA with no access to the funds during the grace period



## Health Flexible Spending Arrangement (Health FSA)

**The health FSA may include carryover of up to \$550 (indexed for inflation) into the next plan year**

- The carryover amount is applied for the entire plan year

**If the health FSA is “general purpose” (will reimburse all otherwise unreimbursed out-of-pocket-medical expenses), the covered individual will not be HSA-eligible for the entire plan year**

- Because the health FSA provides coverage before the minimum HDHP deductible has been satisfied.

**The health FSA may be amended (before the end of the plan year) to provide conversion of carryover funds into a limited purpose health FSA**

- Unlike the health FSA grace period, the carryover provision can provide the participant a choice of whether to carryover into a limited purpose health FSA or a general purpose health FSA
- Also, the plan may provide that the carryover is automatically credited to a limited purpose health FSA if the individual elects the HDHP
  - The health FSA may be amended (before the end of the plan year) to permit participants to suspend or waive carryover

## Health Reimbursement Arrangement (HRA)

**A health reimbursement arrangement (HRA) provides for reimbursement of 213(d) (medical) expenses**

- 100% employer dollars. Claims are typically paid from the employer's general assets

**If the HRA is “general purpose” (will reimburse all otherwise unreimbursed out-of-pocket-medical expenses), the covered individual will not be HSA-eligible for the entire plan year**

- Because the health HRA provides coverage before the minimum HDHP deductible has been satisfied

## Designing an HSA compatible HRA

### Limited Purpose HRA

Provides reimbursement for dental and vision expenses only

### Post-Deductible health HRA

Provides reimbursement after the minimum annual deductible has been satisfied

- The HRA could reference the HDHP deductible or could be designed to pay after the minimum statutory deductible is satisfied

### Retirement HRA

Provides reimbursement after the individual has retired and is no longer contributing to an HSA

## Telemedicine and On-Site Medical Clinics

### Telemedicine

If an individual can receive significant medical benefits with no-cost the telemedicine “visits” will disqualify the individual from contributing to an HSA\*

- The Telemedicine coverage provides pays for services received before the minimum HDHP deductible has been met
- \*More info later about the COVID relief

### On-site medical clinics

If an individual can receive medical benefits with no-cost the on-site medical clinic office visits disqualify the individual from contributing to an HSA

### Possible solution

Charge the fair market value for the visits or services (subject to HDHP deductible)

## Employee HSA Contributions

### **May be made pre-tax through the employer's Cafeteria Plan**

- This must be listed as an available benefit (pre-tax HSA contributions) in the cafeteria plan documents

### **If employee contributions are made through operation of the cafeteria plan, employer contributions are considered to be through operation of the cafeteria plan**

- This avoids the HSA comparable contribution rules (next slide)

### **Employees may be allowed to change their elections on a monthly basis without a corresponding change in status**

- This must be listed as a status change in the cafeteria plan documents

## Comparable Contribution Rule:

- Comparable contribution rules require employer contributions to be the same for comparable participating employees (based on HDHP coverage tier)
- Employer contribution for next-higher tier must be at least equal to employer contribution for lower tier
  - **Example: employer contributes \$500 to all participants with single-only coverage and \$1,000 to all participants with other than single-only coverage**
- May differentiate based on the following classifications only:
  - Current active employees vs. former employees
  - Non-union employees vs. employees in collective bargaining unit
  - Full-time vs. part-time employees
- This prevents the employer from making matching contributions based on the employee's elections
- As previously noted, allowing employees to make their contributions through operation of the cafeteria plan will avoid the comparable contribution rules

## Mid-Year Introduction of an HDHP with HSA Option

**If the health FSA is “general purpose” (will reimburse all otherwise unreimbursed out-of-pocket-medical expenses), the covered individual may not make an election change to the health FSA.**

- Coverage change status changes under Code 125 (pre-tax rules) do not apply to health FSAs

**The covered individual will not be HSA-eligible until the end of the health FSA plan year**

- Because the health FSA provides coverage before the minimum HDHP deductible has been satisfied

## Mid-Year Change from Family to Single HDHP



What is the maximum annual contribution?

Family coverage from January – September  
and then changed to single the calculation is (2021 amounts):

$9/12 \times \$7,200 = \$5,400$   
(rounded to nearest dollar)

$3/12 \times \$3,600 = \$900$   
(rounded to nearest dollar)

**Maximum Contribution Limit**

$\$5,400 + \$900 = \$6,300$



## Mistakes Happen

### What happens when ineligible contributions are made to an HSA?

- It appears the IRS differentiates between those that were never eligible and those that lose eligibility.

#### For those that were never eligible:

- No deductions for individual contributions
- No tax exclusions for employer contributions
- Corrections required for income reporting and tax withholding
- Employer contributions can be recovered

#### For those that lose eligibility:

- Curative distribution can be used if excess contribution and net income attributable to an excess contribution are distributed before the account holder's federal income tax return filing deadline
  - One issue: employers *generally* have to rely on employees to refund an employer's excess contribution because the contributions are nonforfeitable

# HSA's and COVID-19



## Temporary Changes:

- Most testing, and medical services associated with the testing, must be covered without cost-sharing
  - This will not impact HSA contribution eligibility
- Medical services related to the treatment of COVID-19 *may* be covered before the minimum deductible is met without impacting HSA contribution eligibility
- Telemedicine *may* be covered for all services without cost-sharing
- If you extended your FSA grace period under the temporary flexibility rules provided for in Notice 2020-29, this will impact HSA contribution eligibility until the grace period is over if there are any unused funds as of the end of the plan year

# Continuing Education Credits

- This Program, **ID No. 534390**, has been approved for 1.00 HR (General) recertification credit hours toward aPHR™, aPHRi™, PHR®, PHRca®, SPHR®, GPHR®, PHRi™ and SPHRi™ recertification through HR Certification Institute® (HRCI®).



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