Health Savings Accounts

Frequently Asked Questions

Disclaimer

We share this information with our clients and friends for general informational purposes only. It does not necessarily address all of your specific issues. It should not be construed as, nor is it intended to provide, legal advice. Questions regarding specific issues and application of these rules to your plans should be addressed by your legal counsel.
Contents

Basics.................................................................................................................................................. 1

1: What is an HSA? .................................................................................................................................. 1

2: Who is an "eligible individual?" ......................................................................................................... 1

3: What is a Qualified High Deductible Health Plan? ........................................................................... 1

4: How do I know if someone can be claimed as a tax dependent? .................................................... 1

5:  Is HSA eligibility limited to employees? .......................................................................................... 1

Disqualifying Coverage ........................................................................................................................ 1

6: What coverage is “disqualifying coverage?” ................................................................................... 1

7: If our employees are covered by a traditional healthcare flexible spending account ("healthcare FSA") or a health reimbursement arrangement ("HRA"), can they make contributions to an HSA? ............................................................................................................. 2

8: What if our organization establishes a limited purpose healthcare FSA or a Health Reimbursement Arrangement ("HRA"), can our employees make contributions to HSAs? ................................................................. 2

9: If our organization establishes a post-deductible healthcare FSA (i.e., a healthcare FSA that does not reimburse expenses other than for preventive care before the corresponding deductible under an HDHP has been met), can our employees contribute to an HSA? ................................................................. 2

10: If our organization establishes a post-deductible HRA (i.e., an HRA that does not reimburse expenses other than for preventive care before the corresponding deductible under an HDHP has been met), can our employees contribute to an HSA? ................................................................................................................................................. 2

11: If our organization has an on-site health clinic or nurse practitioner, would that disqualify an employee from contributing to an HSA? ................................................................................................................................................. 2

12: If our organization has a general purpose FSA with a grace period, is the employee still eligible to establish an HSA? ................................................................................................................................................. 2

13: If our organization has a general purpose FSA with a $500 carryover, is the employee still eligible to establish an HSA? ................................................................................................................................................. 3

Deductibles and Out-of-Pocket Maximums ....................................................................................... 3

14: What is the minimum annual deductible for qualifying self-only HDHP coverage for 2015? .... 3

15: What is the maximum out-of-pocket expense limit for qualifying self-only HDHP coverage for 2015? ................................................................................................................................................. 3
16: What is the minimum annual deductible for qualifying family HDHP coverage for 2015? .... 3
17: What is the maximum out-of-pocket expense limit for family HDHP coverage for 2015? .... 3
18: What is qualifying HDHP coverage? .............................................................................. 3
19: What expenses count against the out-of-pocket maximum under a qualifying HDHP? ... 4

**Contributions** .................................................................................................................. 4

20: When is an individual’s eligibility determined? ............................................................. 4
21: Does our organization have to verify an employee’s eligibility for an HSA? ................. 4
22: Who can contribute to an HSA? .................................................................................... 4

23: If an employer makes contributions to employees’ HSAs outside of a cafeteria plan, are
there any requirements that the employer also provide contributions to other similar employees? 4
24: Are there limits on the amounts that can be contributed to an HSA? ......................... 5
25: If an employer makes contributions to employees’ HSAs “through a cafeteria plan,” what
rules govern that employer’s contributions? ........................................................................ 5

**Distributions** .................................................................................................................. 5

26: Does an individual have to spend all of the contributions made during a given year in that
same year? ............................................................................................................................. 5
27: Who owns an HSA? ........................................................................................................ 5
28: How is an HSA established? .......................................................................................... 5
29: Can an employer select a certain HSA trustee for employer and/or salary reduction
contributions? .......................................................................................................................... 5
30: Is our organization required to monitor how employees use HSA funds? ..................... 5
31: Can our organization limit how employees use HSA funds – for example, by not allowing an
employee to use the funds for anything other than qualified medical expenses? .............. 6

32: Are medical expenses for an individual’s adult child – such as an employee’s 25-year old
daughter – qualified medical expenses? ............................................................................... 6
33: Does the individual have to be HSA eligible when a distribution is made from his/her HSA
account? ................................................................................................................................. 6
34: What expenses are qualified for distributions from an HSA? ........................................ 6
35: If our organization provides employees with an HDHP and contributes to the employees’
HSA accounts, will the amount our organization contributes to those HSA accounts be included
when determining “minimum value” under the employer shared responsibility requirement of the healthcare reform law?
Basics

1: What is an HSA?
A Health Savings Account (“HSA”) is a tax-favored IRA-type of trust or custodial account to which “eligible individuals” or someone, such as an employer, on their behalf makes contributions. The deposited money earns tax-free interest, and funds are not taxed when used to pay for qualified medical expenses.

2: Who is an “eligible individual?”
An “eligible individual” is someone who: (1) has coverage under a qualified High Deductible Health Plan (“HDHP”); (2) cannot be claimed as a tax dependent by anyone else; (3) is not enrolled in any part of Medicare; and (4) does not have disqualifying coverage. Eligibility is determined on a monthly basis on the first day of each month.

3: What is a Qualified High Deductible Health Plan?
A qualified High Deductible Health Plan (or “HDHP”) is a type of health insurance plan that meets Internal Revenue Code Section 223(c)(2) requirements for minimum annual deductibles and maximum out-of-pocket expense limits. Other than meeting the specific statutory requirements, HDHPs may take many different forms so long as the plan provides “significant benefits.” For example, a plan that covers only hospitalization or in-patient care does not provide “significant benefits” and thus cannot be an HDHP. Likewise a “fixed indemnity” plan (i.e., a plan that pays a flat dollar amount per day such as $100 per day while hospital confined) does not provide “significant benefits” and cannot be an HDHP. An employer-sponsored HDHP may be either self-funded or fully insured.

4: How do I know if someone can be claimed as a tax dependent?
Individuals who fall within the definition of “tax dependent” for purposes of Section 152 of the Internal Revenue Code are tax dependents for purposes of HSA eligibility. Code Section 152 defines tax dependents as either a “qualifying child” or a “qualifying relative.” Spouses are not considered to be tax dependents for these purposes, but generally, children may be tax dependents.

5: Is HSA eligibility limited to employees?
No self-employed individuals such as partners may establish and contribute to an HSA as long as they satisfy all of the other requirements.

Disqualifying Coverage

6: What coverage is “disqualifying coverage?”
“Disqualifying coverage” is any non-HDHP coverage that provides coverage for any benefit covered by the HDHP (e.g., coverage under a spouse’s plan) before the minimum statutory deductible is satisfied. See the GBS HSA Design Guide for additional information: click here.
7: If our employees are covered by a traditional healthcare flexible spending account ("healthcare FSA") or a health reimbursement arrangement ("HRA"), can they make contributions to an HSA?

No. Individuals covered by a traditional healthcare FSA or HRA cannot contribute to an HSA. But see Q&As 8 – 10 and 12 – 13.

8: What if our organization establishes a limited purpose healthcare FSA or a Health Reimbursement Arrangement ("HRA"), can our employees make contributions to HSAs?

Yes. If an eligible individual is covered by an HDHP and by a healthcare FSA (or an HRA) that pays or reimburses only permitted coverage such as limited scope dental or vision benefits, permitted insurance (e.g., cancer insurance coverage with premiums entirely paid by an employee a post-tax basis), or preventive care without regard to the HDHP deductible, that person can establish and make contributions to an HSA. Permitted insurance is limited to certain limited scope benefits such as cancer only policies or fixed indemnity policies such as a policy that pays a fixed dollar amount per day of hospitalization.

9: If our organization establishes a post-deductible healthcare FSA (i.e., a healthcare FSA that does not reimburse expenses other than for preventive care before the corresponding deductible under an HDHP has been met), can our employees contribute to an HSA?

Yes, so long as the FSA does not reimburse any expenses (other than for preventive care) until the statutory minimum deductible requirements have been met, employees remain eligible to create and contribute to an HSA even if enrolled in the FSA.

10: If our organization establishes a post-deductible HRA (i.e., an HRA that does not reimburse expenses other than for preventive care before the corresponding deductible under an HDHP has been met), can our employees contribute to an HSA?

Yes. An employer can establish an HRA that only pays or reimburses medical expenses for preventive care or medical expenses incurred after the applicable HDHP minimum annual statutory deductible has been met without destroying employee eligibility for an HSA. This type of HRA is often called a "post-deductible HRA.”

11: If our organization has an on-site health clinic or nurse practitioner, would that disqualify an employee from contributing to an HSA?

Possibly. If the on-site clinic or nurse practitioner provides medical care (beyond preventive care) for free or at below-market cost before an individual has met the applicable deductible for his or her HDHP, the individual will not be eligible to establish and contribute to an HSA. For example, providing physicals or immunizations will not destroy HSA eligibility, but providing free or reduced cost antibiotics or other treatment for strep throat or pneumonia would.

12: If our organization has a general purpose FSA with a grace period, is the employee still eligible to establish an HSA?

Individuals enrolled in general purpose healthcare FSAs with grace periods will not be eligible for an HSA during the grace period unless: (1) the individual had a $0 balance on a cash basis (i.e., claims incurred and paid, not merely claims incurred or submitted) on the last day of the plan year or the health care FSA automatically converts to a limited purpose or post-deductible FSA (HSA compatible FSA) during the grace period for all participants.
13: If our organization has a general purpose FSA with a $500 carryover, is the employee still eligible to establish an HSA?

Enrollment is a general purpose FSA with a carryover provision makes an individual ineligible to contribute to an HSA for the entire plan year. This includes an individual who has coverage under the general purpose health FSA only as the result of a carryover of an unused amount from the prior year. However, there are three ways that a plan can be modified so that individuals do not lose HSA-eligibility as the result of a health FSA carryover provision: (1) permit employees who enroll in a general purpose health FSA to enroll in an HSA-compatible FSA for the following year and carry over unused balances to the HSA-compatible. This election must be made before the HSA/HDHP plan year begins. (2) If a cafeteria plan offers both a general purpose and an HSA-compatible FSA, when an employee enrolls in an HDHP for the following year a cafeteria plan may automatically treat the employee as enrolled in the HSA-compatible FSA for the following year and transfer unused funds (up to the $500 or lower plan limit) to the HSA-compatible FSA. (3) Permit employees enrolled in a general purpose health FSA to decline or waive the carryover of amounts of coverage to the next plan year. The waiver must be signed before the end of the plan year of the general purpose health FSA.

Deductibles and Out-of-Pocket Maximums

14: What is the minimum annual deductible for qualifying self-only HDHP coverage for 2015?

Qualifying HDHP self-only coverage must have an annual deductible of at least $1,300 for 2015 before any reimbursement may be made for eligible medical expenses (other than for preventive care).

15: What is the maximum out-of-pocket expense limit for qualifying self-only HDHP coverage for 2015?

The maximum out-of-pocket expense limit for self-only HDHP coverage for 2015 is $6,450.

16: What is the minimum annual deductible for qualifying family HDHP coverage for 2015?

The minimum annual deductible for qualifying family HDHP coverage for 2015 is $2,600.

17: What is the maximum out-of-pocket expense limit for family HDHP coverage for 2015?

The maximum out-of-pocket expense limit for family HDHP coverage for 2015 is $12,900.

18: What is qualifying HDHP coverage?

For qualifying HDHP coverage, individuals with family coverage cannot be reimbursed for medical expenses (other than preventive care) until the required minimum annual deductible for family HDHP coverage has been met. This is sometimes referred to as an embedded deductible. Thus, if a plan has an individual deductible that is lower than the required deductible for family coverage, the HDHP coverage is not qualifying coverage. For example, for 2015 if a plan has a $1,300 per person annual deductible and a $2,600 annual deductible for family coverage (i.e., the plan pays benefits after the single deductible has been met, but before the family deductible has been satisfied), the plan would not be a qualified HDHP because medical expenses could be reimbursed before the family deductible minimum of $2,600 has been met.
However, if the individual deductible was as high as the applicable statutorily required deductible for qualifying HDHP coverage, the use of the embedded deductible would be permissible. For example, for 2015 if a plan had a $5,200 family deductible and a $2,600 individual deductible, then the plan would meet the statutory requirements.

19: What expenses count against the out-of-pocket maximum under a qualifying HDHP?

Co-payments, coinsurance, and amounts paid toward meeting a deductible count toward satisfying the out-of-pocket maximum under a qualifying HDHP.

Contributions

20: When is an individual’s eligibility determined?

An individual’s eligibility is determined on a monthly basis on the first day of the month. In addition, the HSA contribution limit is calculated on a monthly basis, and contributions may only be made for months in which an individual meets the eligibility requirements. If an individual becomes covered under an HDHP in the middle of a month, that individual becomes eligible to establish and contribute to an HSA on the first day of the following month (assuming all other eligibility requirements are met).

21: Does our organization have to verify an employee’s eligibility for an HSA?

An employer is only required to verify whether: (1) the individual is enrolled in your organization’s HDHP; (2) whether the individual is enrolled in disqualifying coverage through your organization such as a healthcare FSA or an HRA that is not HSA-compatible; and (3) the individual’s age (to determine if the individual is eligible for catch-up contributions). The employer may rely on information the employee provides about his/her age.

22: Who can contribute to an HSA?

An employer, an employee, or someone on behalf of an employee may contribute to an HSA. Employer contributions to an employee’s HSA are not included in the employee’s gross income, and employers may deduct their HSA contributions as business expenses.

23: If an employer makes contributions to employees’ HSAs outside of a cafeteria plan, are there any requirements that the employer also provide contributions to other similar employees?

Yes. If the employer contributes to employees’ HSAs outside of a cafeteria plan, the employer will be subject to an excise tax equal to 35% of all of its contributions during a calendar year unless it makes “comparable” contributions for all comparable participating HSA eligible employees for each level of coverage. Comparable contributions are either the same dollar amount or the same percentage of the applicable HDHP deductible. The comparability rules permit employers to base contributions on four different tiers of coverage: (1) self-only; (2) self-plus-one; (3) self-plus-two; and (4) self-plus-three-or-more. An exception is available for certain union groups. This rule applies on a controlled group basis – as defined in IRC Section 414(b), (c) and (m). If an employer makes HSA contributions to employees’ HSAs through a cafeteria plan, different rules apply. See Q&A-25 for information.
24: Are there limits on the amounts that can be contributed to an HSA?

The maximum amount that can be contributed to an HSA is set by federal law. The maximums are established based upon whether an individual has self-only HDHP coverage or family coverage. In 2015, the maximum annual contribution for an individual with self-only coverage is $3,350. For those with family coverage, the maximum is $6,650. Catch-up contributions are permitted for individuals ages 55 or older. Under current law, the catch-up contribution is $1,000. The $1,000 catch-up amount is not indexed.

25: If an employer makes contributions to employees’ HSAs “through a cafeteria plan,” what rules govern that employer’s contributions?

If an employer makes contributions to employees’ HSAs “through a cafeteria plan,” the HSA contributions will be subject to nondiscrimination rules under Section 125, which prohibits discrimination in favor of highly compensated or key employees. If employees are permitted to make their own contributions to their HSAs on a pre-tax basis (i.e., through pre-tax salary reductions), then the employer’s contributions to employees’ HSAs are considered to be made “through a cafeteria plan.”

Distributions

26: Does an individual have to spend all of the contributions made during a given year in that same year?

No. HSA distributions that are made for “qualified medical expenses” are not subject to federal income tax. Unspent funds in an HSA may be rolled over to the next year and earnings will accrue tax-free. Distributions for expenses other than qualified medical expenses are subject to federal income tax and are generally subject to a 20% penalty.

27: Who owns an HSA?

HSAs are owned by the individual and not the employer. In addition, there are no joint accounts (e.g., a husband and wife do not jointly own an account).

28: How is an HSA established?

After enrollment in an HDHP, an individual must establish an account with a bona fide HSA trustee. A “bona fide HSA custodian” is simply a financial institution such as a bank or a life insurance company. Other entities that have been specifically been approved by the IRS may also be HSA trustees – a list is available on the IRS website.

29: Can an employer select a certain HSA trustee for employer and/or salary reduction contributions?

Yes, an employer may select an HSA trustee as long as there are no restrictions on the employee’s taking the money out of the account (for example, the employee may choose to transfer the funds to another HSA trustee as soon as they are deposited).

30: Is our organization required to monitor how employees use HSA funds?

No. The individuals who own the HSAs are responsible for determining if distributions are for qualified or non-qualified expenses. Neither the HSA trustee, nor the employer is responsible for making this determination. Unlike FSAs or HRAs, claims adjudication by an independent third party is not required.
31: Can our organization limit how employees use HSA funds – for example, by not allowing an employee to use the funds for anything other than qualified medical expenses?
No. The employee who owns the HSA account may use those funds for any purpose, although the money will be taxable and generally also subject to a 20% penalty if not used for qualified medical expenses.

32: Are medical expenses for an individual’s adult child – such as an employee’s 25-year old daughter – qualified medical expenses?
Only if the 25-year old child satisfies the definition of a “qualifying relative” under the Internal Revenue Code. Although PPACA changed the tax treatment of adult children for health coverage such as major medical, dental, vision and even FSAs, it did not change the definition for HSAs.

33: Does the individual have to be HSA eligible when a distribution is made from his/her HSA account?
No. The individual is required to be HSA eligible only when the HSA account is established and when he or she contributes money into the HSA account.

34: What expenses are qualified for distributions from an HSA?
Generally health care expenses that would be deductible on the individual’s federal income tax form are qualified distributions from an HSA. However, health insurance premiums are not a qualified expense except under certain limited circumstances. Internal Revenue Publications #969 and #502 provide more detailed information.

35: If our organization provides employees with an HDHP and contributes to the employees’ HSA accounts, will the amount our organization contributes to those HSA accounts be included when determining “minimum value” under the employer shared responsibility requirement of the healthcare reform law?
So far, only very limited guidance has been provided. However, the IRS has said that some portion of an employer’s contribution – but not all – may be included when determining “minimum value.” More detailed guidance is expected in the future.

The intent of this analysis is to provide general information regarding the provisions of current healthcare reform legislation and regulation. It does not necessarily fully address all your organization’s specific issues. It should not be construed as, nor is it intended to provide, legal advice. Your organization’s general counsel or an attorney who specializes in this practice area should address questions regarding specific issues.