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COMPLIANCE ALERT 2015-3



HRAs, HSAs, and Health FSAs - What's the Difference?

Health reimbursement arrangements (HRAs), health savings accounts (HSAs) and health care flexible spending accounts (HFSAs) are generally referred to as account-based plans. That is because each participant has their own account, at least for bookkeeping purposes. Under the tax rules, amounts may be contributed to these accounts (with certain restrictions) and used for health care on a tax-favored basis.

The Patient Protection and Affordable Care Act (PPACA) has added new requirements that affect HRAs and HFSAs. Most HFSAs and HRAs will need to be amended to meet the new PPACA requirements. HSAs generally are not affected by PPACA.

The chart below describes the main characteristics of these types of accounts, and should help you decide which is the best option for your particular situation.

	HFSA	HRA	HSA
Who may legally participate?	Any employee who is also eligible to participate in a group medical plan sponsored by the employer; retired employees are eligible if most participants are active employees.	Any employee who is covered by a group medical plan sponsored by the employer (or if the employer chooses, by the spouse's employer); retired employees are eligible (a retiree-only plan does not have to meet the medical coverage requirement).	Any employee who is covered by a high deductible health plan (HDHP), not covered by a plan that is not an HDHP, and not covered by any part of Medicare or eligible to be claimed as a tax dependent; individuals who are

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			receiving Medicare may not contribute to an HSA.
May the employer impose additional eligibility requirements?	Yes, the employer may design the plan to cover whom it wishes as long as it meets the non-discrimination requirements.	Yes, the employer may design the plan to cover whom it wishes as long as it meets the non-discrimination requirements.	An employer may not limit the ability of an eligible employee to contribute to an HSA, but the employer may limit its contributions to employees participating in the HSA designated by the employer.
May an employee contribute to the account?	Yes, up to the lesser of \$2,500 (indexed to \$2,550 for 2015) or the maximum set by the plan (any carryover does not apply toward the \$2,500 cap).	No.	Yes, up to the total contribution limit (\$3,350 in 2015 for self-only coverage and \$6,650 in 2015 for family coverage); individuals aged 55 or greater may contribute an additional \$1,000.
May an employer contribute to the account?	Yes, up to two times the employee's contribution plus \$500.	Yes.	Yes, up to the total contribution limit described above.
May another person or entity contribute to the account?	No.	No.	Yes - anyone may contribute to an HSA, up to the total contribution limit.
Does the spouse's coverage matter?	No.	An employer may - but is not required to -- integrate the HRA with coverage through the spouse's employer.	Yes. If the employee is covered by a non-HDHP through the spouse (which may include an HFSA or an HRA), the employee will not be eligible to contribute to an HSA.
Is a formal account required?	No, a notational/ bookkeeping account is allowed.	No, a notational/ bookkeeping account is allowed.	Yes, a trust or custodial account is required. Generally this is done at a bank or credit union.
Should a Section 125 cafeteria plan be used?	Yes - the HFSA must be part of a Section 125 plan.	No - an HRA may not be part of a Section 125 plan.	An HSA may, but need not be, part of a Section 125 plan. Including in a Section 125 plan will allow the employee to contribute with pre-tax dollars and allow the employer to meet the Section 125 non-discrimination rules instead of the comparable contribution rules.
What health expenses may be reimbursed?	All medical expenses allowed by Code Section 213 (which includes dental and vision expenses), except long term care services, may be reimbursed. Premiums may not be reimbursed.	All medical expenses allowed by Code Section 213 (which includes dental and vision expenses), may be reimbursed. Health premiums may be reimbursed for group coverage if not reimbursing (directly or indirectly) employee's pre-tax premium. The	All medical expenses allowed by Code Section 213, except premiums (unless for COBRA, long-term care insurance or Medicare supplemental, which may be reimbursed).

		cost of premiums for individual policies may not be reimbursed.	
May non-health expenses be reimbursed?	No.	No.	Yes, but income taxes and a 20% excise tax will apply.
Are limits on reimbursable expenses allowed?	Yes. An employer may exclude specific expenses if it wishes. It also may design the plan to be a "limited purpose" FSA to interface with an HSA option. Limited purpose FSAs typically only reimburse dental, vision and/or preventive care expenses, retiree expenses, or expenses in excess of the IRS high deductible.	Yes. An employer may exclude specific expenses if it wishes. It also may design the plan to be a "limited purpose" HRA to interface with an HSA option. Limited purpose HRAs typically only reimburse dental, vision and/or preventive care expenses, retiree expenses, or expenses in excess of the IRS high deductible.	No.
Whose expenses may be reimbursed?	The employee, spouse, children under age 27 and tax dependents, if the expense was incurred during the coverage period.	The employee, spouse, children under age 27 and tax dependents, if the expense was incurred while coverage is in effect.	The employee, spouse, children under age 27 and tax dependents - even if the person is not eligible to set up their own HSA - if the expense was incurred after the HSA is established.
How are expenses reimbursed?	Employee submits substantiated expense to claims administrator. May be paper or debit card.	Employee submits substantiated expense to claims administrator. May be paper or debit card.	Employee pays expense from HSA. May be paper or debit card. Employee is responsible for maintaining record to substantiate expense.
May expenses be reimbursed after employment terminates?	COBRA may be elected, generally until the end of the plan year in which termination occurred.	COBRA may be elected. Employer may design plan to allow reimbursement after termination, but employee must be given option to decline that extended coverage.	Yes.
May unused contributions be carried over from year to year?	Generally no; however, plan may be designed to allow carryover of up to \$500 into next year or a grace period to incur claims attributable to prior year for up to 2-1/2 months.	Yes, if plan allows.	Yes (the account is the individual's).
May an employee access funds before they have been contributed?	Yes - under the HFSA rules the employee must have access to the full planned contribution for the year on the first day of the coverage period.	Not required, but plan may be written to allow full access at start of year.	Generally no, although in certain situations the employer may advance contributions.
May planned contributions be changed mid-year?	Generally no. An employee may make a mid-year change only if allowed under the Section 125 change in status rules.	Yes (may require plan amendment and participant communications).	Yes - even if employee is contributing to the HSA through a Section 125 plan.
Do non-discrimination rules apply?	Yes, the Section 125 and the Section 105(h) rules apply.	Yes, the Section 105(h) rules apply.	Yes, either the Section 125 or the comparability rules apply.

May an employee participate in multiple accounts?	May participate in an HSA if HFSA is limited purpose; pays after HRA unless plan provides differently.	May participate in an HSA if HFSA is limited purpose; pays before HFSA unless plan provides differently.	Could also participate in a limited purpose HFSA or HRA.
Are a plan document and SPD required?	Yes (unless a government or church plan).	Yes (unless a government or church plan).	Not for HSA; will need for related HDHP.
Is a 5500 required?	If 100+ participants in the HFSA unless a government or church plan.	If 100+ participants in the HFSA unless a government or church plan.	No.
Is W-2 reporting required?	No, provided the HFSA is an "excepted benefit."	No (reporting is currently optional).	Employer contributions are reported in Box 12 with code W; do not include in "cost of coverage" reporting under code DD.
Does the PCORI fee apply?	Not if an excepted benefit (if owed, fee is only due on employees, not dependents).	Yes, if HRA is the only self-funded plan using that plan year (fee is only due on employees, not dependents).	No.
Does the health insurance provider fee apply?	No.	No.	No.
Does the TRF apply?	No.	No.	No.
Do contributions apply to Cadillac tax?	Yes (both employer and employee).	Yes.	Yes (employer; probably employee if made through a Section 125 plan).
Do contributions apply toward minimum value determinations?	No.	Yes, if may only be used for cost-sharing (deductible, coinsurance, copays).	Yes.
Do employer contributions apply to affordability determinations?	No.	Yes, if may be used for premiums and/or cost-sharing.	No.
Qualifies as "minimum essential coverage"?	No.	Yes (if provides any medical benefits).	No.
Do HIPAA privacy requirements apply?	Yes.	Yes.	Not to HSA; may apply to related HDHP.
Is a Medicare Part D notice required?	No.	Yes, unless integrated with the Rx coverage.	Not for HSA; will need for related HDHP.

Notes:

- To qualify as an excepted benefit, an HFSA must be offered in conjunction with a group medical plan and the employer's contribution cannot exceed two times the employee's pre-tax contribution to the HFSA plus \$500.
- Beginning in 2014, HRAs must be available only to individuals actually covered by the group medical plan (or the spouse's group medical plan if the plan provides). Participants must be given the option to decline further HRA reimbursement annually and when their employment terminates.

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