July 23, 2020

HSA Administration and Compliance

Presented by Benefit Comply

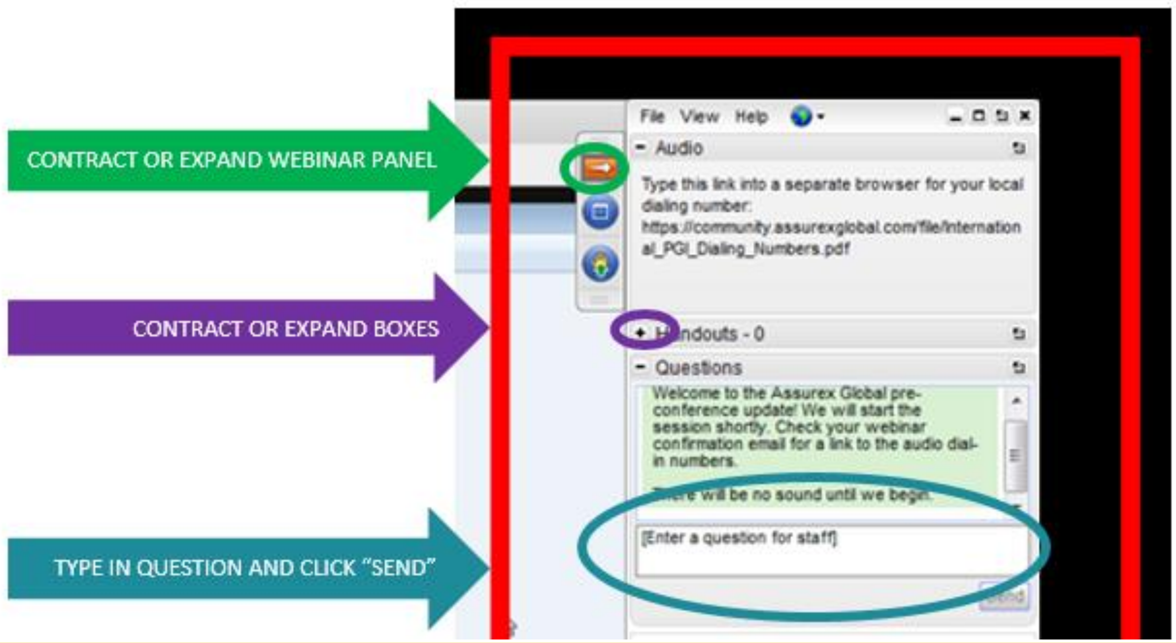
HSA Administration and Compliance

- Welcome! We will begin at 3 p.m. Eastern

- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.

- You will be able to submit questions during the webinar by using the “Questions” or “Chat” box located on your webinar control panel.

- Slides can be printed from the webinar control panel – expand the “Handouts” section and click the file to download.



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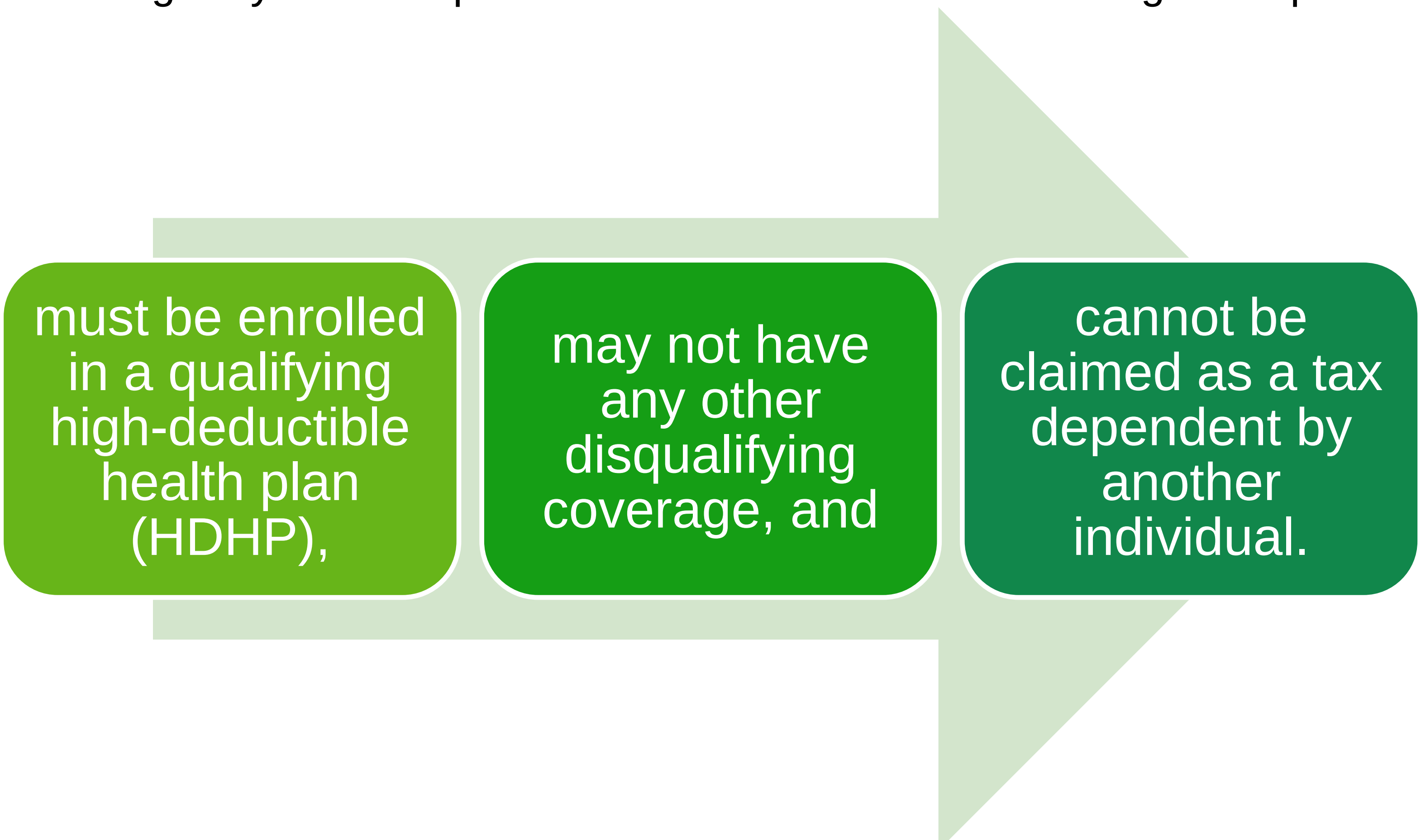
- The Underwriters Group
- Woodruff Sawyer

Agenda

- HSA Eligibility
  - Required HDHP Coverage
  - Impermissible Other Coverage
- HSA Contribution Rules
- HSA Distributions

HSA Eligibility

- Who is an HSA Eligible Individual?
  - Who can make/receive HSA contributions?
  - HSA eligibility is not required for tax free distributions for eligible expenses



Qualifying HDHP

- Qualified HDHPs Must Meet Two Requirements:
  - 2020 Amounts

Maximum Out-Of-Pocket	• Self-only: $6,900 • Family: $13,800
Minimum Deductible	• Self-only: $1,400 • Family: $2,800

Maximum Out-Of-Pocket

- Note that ACA rules for OOP maximums for non-grandfathered plans are different
  - Recent guidance indicates grandfathered plans can make changes necessary to remain a qualified HDHP without losing grandfathered plan status
- 2020 health reform maximum OOP
  - Single - $8,150, Family (other than single) - $16,300
- Health reform single OOP limit applies to each individual - even those with family coverage.
  - HDHP Family OOP Max = $13,800 vs. ACA Single OOP Max = $8,150

Minimum Deductible

- Individual may not receive plan benefits until they have spent the minimum deductible amount out-of-pocket
  - The only exception is that preventive benefits can be first dollar coverage
- Embedded deductibles
  - Embedded individual deductible for someone with coverage other than single cannot be less than the family deductible (i.e. $2,800 in 2020)
    - Not a qualified HDHP
      - Family HDHP has a $5,000 deductible and an embedded individual deductible of $2,500 (less than $2,800)
    - Qualified HDHP
      - Family HDHP has a family deductible of $6,000 and an embedded individual deductible of $3,000 (more than $2,800)

Other Coverage

Permissible Coverage	Impermissible Coverage
• Limited-purpose or post-deductible health FSA • Limited-purpose or post-deductible HRA • Employee Assistance Programs (EAPS), so long as they do not provide significant medical care • Wellness programs, so long as they do not provide significant medical care • VA coverage for individuals with a disability rating	• Medical plans with a deductible or OOP maximum less than the HSA statutory minimums • General-purpose health FSAs • HRAs reimbursing claims below the HDHP statutory minimum deductible • Medicare, Tricare, and Medicaid coverage • Indian Health Service • VA coverage • On-site clinics providing significant medical care if particpants are not requried to pay fair market value for the services • Executive reimbursement plans (unless limited solely to coverage for annual physicals) • Health care sharing ministry • Most direct primary care arrangements

Note: There is little to no guidance regarding telemedicine services. Until further guidance is available, the conservative approach is to assume that such coverage would cause HSA ineligibility unless the individual is required to pay fair market value for the services.

HSAs and Health FSAs

- Participation in a general-purpose health FSA disqualifies an individual from contributing to an HSA
  - HSA ineligible if individual is eligible under their own employer's health FSA or a spouse's health FSA
- Participants in a health FSA may not contribute to an HSA until the end of the health FSA plan year
  - The health FSA balance during the plan year does not matter. Individual is ineligible for HSA contributions even if health FSA balance is $0
- Health FSA grace period or carryover provisions may extend ineligibility

HSAs and Health FSAs

- Optional 2 ½ month health FSA grace period
  - If participant has a zero balance at the end of the plan year, the individual is eligible to contribute to the HSA the following year
  - If participant has an unused year-end balance, the individual is ineligible to make HSA contributions until the end of the grace period
  - Same application to optional claims extension under Notice 2020-29
  - A plan could be designed so that the grace period is converted to a limited-purpose or post-deductible FSA *for all participants*.
    - – If a grace period is designed this way, it will not interfere with HSA eligibility

HSAs and Health FSAs

- Optional $500 health FSA carryover
  - If participant has an unused year-end balance, the carryover makes an individual ineligible for HSA contributions for the entire carryover plan year
  - A health FSA can be designed with a carryover provision that only allows carry over if the individual elects to contribute a minimum amount to the health FSA in the carry-over year
  - A carryover can also be designed to convert to a limited-purpose FSA.
    - Unlike the grace period, can be converted just for those electing HDHP
    - If a carryover is designed this way, it will not interfere with HSA eligibility

HSAs and Medicare

- HSAs and Medicare
  - Individuals who are both eligible for and enrolled in ("entitled to") Medicare are ineligible to contribute to an HSA
  - Medicare Part A enrollment is automatic for individuals as soon as they are eligible and accept Social Security benefits
    - Choosing not to enroll in Part B does not preserve HSA eligibility – Part A alone makes an individual ineligible to contribute to HSA
  - The only way to avoid Medicare Part A enrollment is to delay receipt of Social Security benefits
    - NOTE – sometimes those choosing to delay Social Security benefits will be retroactively enrolled in Medicare once they begin accepting Social Security benefits (up to 6 months) – The Part A entitlement date makes the individual ineligible to make HSA contributions
    - Key point – Individual must know Medicare Part A entitlement date
  - Spouse's Medicare entitlement (and resulting HSA-ineligibility) does not impact the employee's ability to maintain and contribute to an HSA

HSA Contributions

- 2020 Limits
  - Maximum individual annual contribution = $3,550
  - Maximum family annual contribution = $7,100

How many months out of the year is the individual HSA eligible?

What tier of HDHP coverage is the individual enrolled in?

Does the special rule for spouses apply to this individual?

Is the individual eligible for a catch-up contribution?

Answer each question to determine an individual's annual HSA maximum contribution.

HSA Contributions

- Contribution Rules
  - Eligibility determined monthly on the 1st day of the month
  - Maximum annual contributions equals 1/12 of annual max times months an individual is eligible (except for the full-contribution rule – more later)
  - Contributions can be made during the tax year and up until the original filing due date for the individual's tax return (typically April 15th)
- "Special Rule" for Married Couples
  - If one spouse has family coverage, both are treated as having family coverage, but together they cannot exceed the annual family contribution amount
  - The spouses' contribution limit is divided equally unless spouses agree on a different division
- Catch-Up Contributions
  - HSA-eligible individuals who have attained age 55 by the end of the taxable year can make a $1,000 extra catch-up contribution

HSA Contributions

- Full-Contribution Rule (also called "Last Month Rule")
  - New mid-year enrollees in HDHP who are covered on December 1st can make full annual contribution to HSA
  - Must remain HSA-eligible for full 13-month "testing period" running from December 1st through the end of the following year
  - Failure to remain HSA eligible for entire testing period – individual must pay tax and additional 10% excise tax on excess contribution
- Contribution Timing
  - HSA contributions may not be made before the tax year begins on January 1st, or, if later, before the HSA is established
  - HSA contributions are permitted to be made up until the original filing due date for the individual's tax return, which is generally April 15th of the following year

HSA Contributions

- Employee Contributions
  - Pre-tax payroll deductions made through a Section 125 cafeteria plan

    or

  - Contributions made directly to HSA account and taken as a deduction when filing taxes
- Employer Contributions
  - Directly into employee HSA account
    - In this case the employer contributions are subject to the HSA comparability rules (more later)

    or

  - Through a Section 125 Cafeteria Plan
    - Employer contributions made through 125 plan are not subject to HSA comparability rules but are included in Section 125 discrimination testing

HSA Contributions

- Direct Employer Contributions (not through Section 125 Cafeteria Plan)
  - Subject to the Comparability Rule
    - Employer must contribute same dollar amount or same percentage of the HDHP deductible for each comparable employee in the same tier of HDHP coverage - single or other than single (e.g., family or EE+1)
    - Contributions can also vary based on class of employee
      - Current Full-Time, Current Part-Time, Former Employees
  - Matching contributions not permitted under comparability rule
  - Non-comparable employer contributions subject to 35% excise tax

HSA Contributions

- Employer Contributions through a Section 125 Cafeteria Plan
  - Not subject to comparability rule
    - Employer could provide matching or other nondiscriminatory arrangement
  - Employees must be allowed to change pre-tax HSA payroll contributions at least once per month
  - All contributions, including employee pre-tax contributions, would be subject to Section 125 nondiscrimination testing
    - Can cause Section 125 testing problems for smaller employers

HSA Contributions

- Employee Fails to Open HSA Account
  - Employer contributions made through 125 plan
    - If employer contributions are made through a cafeteria plan, there is nothing further to be done and the employee will not receive the contributions
  - Direct employer contributions made outside of a cafeteria plan
    - Employer must provide a written notice
      - Notice states that an eligible employee must establish an HSA and notify the employer by the end of Feb. - must notify to receive employer HSA contribution
      - Notice must be provided no earlier than 90 days before the employer makes its first HSA contribution for the year, and no later than January 15 of the following calendar year
      - A model notice is available at Treas. Reg. §54.4980G-4, Q/A-14(c)
    - Employer must make a comparable contribution by April 15 for each eligible employee who establishes an HSA and notifies the employer by the end of February

HSA Contributions

- Employer HSA Contributions are Non-Forfeitable
  - Generally, employers may not recoup the contributions, but should re-characterize any excess contributions as taxable income to the employee
  - Contributions that an employer mistakenly makes to an employee's HSA may not be returned even if the employee consents
  - IRS Notice 2008-59 identifies two very limited situations where mistaken contributions may be returned to the employer:
    - Contributions made to an employee who was not eligible to establish an HSA
    - Employer contributes more than the employee’s maximum annual contribution
  - In an information letter, the IRS also states other corrections may be allowed if there is "clear documentary evidence demonstrating that there was an administrative or process error”
- Excess Contributions
  - In order to avoid a 6% excise tax on excess contributions, employee should request a distribution of the excess contributions and earnings before the individuals’ federal income tax filing deadline

HSA Distributions

- HSA distributions are tax-free for qualified medical expenses
  - Medical care as defined by IRC §213(d) for the HSA account holder and legal spouse and tax dependents
    - Note that tax dependents may be different than dependents who are eligible to participate in an employee's health plan
    - IRS Publications 502 and 969 provide guidance as to qualified medical expenses
- HSA funds are not allowed to reimburse insurance premiums on a tax-favored basis, except for:
  - COBRA or USERRA coverage;
  - Qualified long-term care insurance contract;
  - Any health plan maintained while the individual (i.e., the HSA holder or his or her spouse or dependent) is receiving unemployment compensation under federal or state law; or
  - For HSA holders age 65 or over, any deductible health insurance (e.g., retiree medical coverage) other than a Medicare supplemental policy.

HSA Distributions

- Other Distributions Rules
  - Expense must be incurred after the HSA was established
  - Expenses must not be reimbursed by insurance or other source
  - Shoebox rule: distributions can be taken tax free in later years for expenses incurred after HSA is established
  - Individual must certify on tax return that they have enough eligible expenses to cover tax-free distribution taken
  - HSA eligibility does not matter for distributions
  - Distributions for non-qualified expenses subject to income tax and a 20% excise tax

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