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Q&A FROM ASSUREX GLOBAL WEBINAR

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HSA ADMINISTRATION AND COMPLIANCE

Q. "On-site medical Clinics providing care at below fair market value" would this apply to a medical office providing an HDHP to employees, and discounting services provided to an employee?

A. If the employees end up paying something less than fair market value due to the employee discount, then it is likely that the availability of such services would cause HSA-ineligibility.

Q. When 65 or over, can you clarify what insurance premiums you can use HSA funds for, you say Medicare supplement is a no-no? I didn't understand that, what else might it be used for?

A. HSA account holders who are age 65 or older may use HSA funds to reimburse premiums for Medicare Part A or B, Medicare HMO, contributions for employer-sponsored health insurance (including retiree health insurance), and individual health insurance, so long as they are not already being reimbursed elsewhere or being paid for on a tax-favored basis (e.g. through a cafeteria plan). The funds may not be used to reimburse Medigap premiums.

Q. Age 65+, can they use their contributions to buy ANYTHING they want, for example, a boat tax free and without penalty?

A. Individuals age 65 and older may use the HSA funds to reimburse non-qualifying medical expenses so long as the amount is included as taxable income. The amounts would not be subject to the 20% excise tax that apply for individuals under age 65 who use the funds for non-qualifying medical expenses.

Alaska adding that Indian Health Services also precludes HSA eligibility if services have been received at a tribal facility within 3 months...

A. This is not specific to Alaska. In general, an individual who has received medical services from an Indian Health Services (IHS) facility during the previous three months will be ineligible to make HSA contributions unless the medical services qualified as permitted coverage (e.g. dental and vision care) or preventive care (e.g. well-baby visits and immunizations).

Q. An employee has an HDHP plan along with his spouse. The employee receives Medicare. Can his wife open an HSA account?

A. Yes, so long as the wife is HSA-eligible (i.e. enrolled in an HDHP, no disqualifying coverage, and cannot be claimed as a tax dependent). The employee's enrollment in Medicare and resulting HSA-ineligibility does not affect the spouse's ability to contribute to an HSA.

Q. Are FSA and HSA eligible expenses the same?

While similar, there are a few differences. For example, a health FSA is never available to reimburse health insurance premiums, while an HSA may be used to reimburse COBRA premiums, and may reimburse health insurance premiums more broadly for HSA account holders age 65 or older. The HSA funds are also available to reimburse long-term care insurance premiums.

Q. As of January 1st the employee is on an HDHP. On March 2nd the employee will be retiring. Can they put in their annual max + catch up during that specific time period?

A. An individual is permitted to contribute 1/12 of the annual contribution maximum (and 1/12 of the catch-up contribution) each month the individual is HSA-eligible. If the individual is only enrolled in the HDHP for January - March, the individual is only permitted to contribute 3/12 of the contribution limit for the year. However, if the individual elects COBRA or is covered under another HDHP following retirement (e.g. through a retiree plan or individual plan), the individual may be able to contribute the maximum annual contribution amount.

Q. Can a person contribute the full amount in the first month/pay periods of the year?

Yes, but if the individual does not remain HSA-eligible all year, the individual will need to either request a curative distribution or pay additional taxes and penalties on the excess contributions made for the months the individual was not HSA-eligible.

Q. Can an employee contribute to the family max for an HSA if their spouse is covered under both the spouse HDHP and a traditional PPO plan

A. So long as the employee is enrolled in family HDHP all year and does not have any disqualifying coverage, the employee may contribute up to the family maximum contribution amount. If the spouse was also eligible to contribute to an HSA, together they could not contribute more than the family maximum contribution amount; however, because the spouse is not eligible to contribute to an HSA (due to enrollment in the PPO plan), the employee may contribute up to the full family amount for the year without having to coordinate contributions with the spouse.

Q. Can employees enroll in an HSA once the grace period has ended?

A. If an employee was enrolled in a general-purpose health FSA with a grace period in the previous plan year and has money remaining at the end of the plan year, the employee is ineligible to contribute to an HSA through the end of the grace period. The employee could contribute after the grace period ends so long as the employee is otherwise eligible to contribute to an HSA. In addition, if the employee is still HSA-eligible as of December 1, the employee could choose to take advantage of the full contribution rules and contribute the full annual maximum for the year so long as the employee remains HSA-eligible for the 13-month testing period.

Q. Can someone who was previously enrolled in an FSA account and has monies left in the account contribute to an HSA? (Prior year FSA had a $500 roll-over).

A. If an employee was enrolled in a general-purpose health FSA with a carryover in the previous plan year and has money remaining at the end of the plan year, the individual is ineligible to contribute to an HSA through the entire next year UNLESS the employee waives the carryover or the carryover is converted to a limited-purpose health FSA.

Q. Can you provide an employer match to management only?

A. So long as employer HSA contributions are run through a cafeteria plan (and employees are allowed to make HSA salary reduction elections), the employer is allowed to differentiate contributions for different categories of employees. However, the contributions would be considered in aggregate with other benefits offered under the cafeteria plan when performing discrimination testing, and therefore could be an issue if the HSA contributions result in the highly compensated individuals being favored in violation of Section 125 nondiscrimination rules.

Q. Could you explain again what a limited purpose FSA is?

A. A limited-purpose health FSA is typically available to reimburse only preventive coverage and/or limited-scope dental or vision expenses. Since it does not provide coverage for the broader medical expenses, it will not cause HSA-ineligibility.

Q. Do you need to amend the section 125 plan to allow for employer contribution to an HSA? Current POP portion of section 125 allows for Medical/Dental/vision premiums.

A. Yes, an amendment would be required. In order for employer HSA contributions to be run through a cafeteria plan, the plan must also permit employees to elect HSA salary reductions if desired.

Q. Does a $0 copay Teladoc Plan disqualify you from being eligible for an HSA plan?

A. There is little to no guidance in regard to telemedicine (Teladoc) 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.

Q. Does being eligible for Medicare disqualify you or do you have to be enrolled in Medicare coverage. Someone over 65 may still be on their employer plan.

A. An individual who is merely eligible for Medicare is still eligible to contribute to an HSA, assuming the individual is otherwise eligible. An individual who is enrolled in (entitled to) Medicare is not eligible to contribute to an HSA.

Q. Does FSA participation by someone covered by the HDHP affect HSA eligibility for the person (spouse) providing the coverage?

A. Coverage under a general-purpose health FSA by either spouse will typically cause both to be ineligible to contribute to an HSA because the general-purpose health FSA is available to reimburse qualifying medical expenses of both spouses.

Q. Does the maximum out-of-pocket apply to out-of-network coverage too or just in-network limits?

A. Only the in-network coverage must meet HDHP statutory deductible and out-of-pocket maximum requirements. The out-of-pocket maximums for out-of-network expenses may be higher without jeopardizing HDHP status.

Q. Employee and spouse are over age 55. Their HDHP [EE/Spouse coverage] is through the employee's employer. Employee contributes an additional $1000 to his HSA through his payroll deduction. Is the employee that carries the insurance for himself and his wife allowed to contribute an additional $1000 to his wife's [a separate account] HSA through HIS payroll deduction?

A. No. HSA contributions may only be made on a tax-favored basis (by the employer, or pre-tax through payroll) into the employee's HSA. Contributions into the spouse's HSA must be made on an after-tax basis, but then an above-the-line deduction may be claimed on the spouse's personal tax return.

Q. Employee works AND collects Social Security. Employee and children are covered under his employer's HDHP for the entire year. Can the employee contribute anything to a family H.S.A? If so, how much?

A. If the employee is enrolled in (entitled to) Medicare, the employee is not eligible to contribute to an HSA. However, if the employee is not enrolled in Medicare and is otherwise eligible to contribute to an HSA, the employee could contribute up to the full family annual maximum.

Q. How do you determine "fair market value"?

A. With respect to determining fair market value, there is no clear guidance that we're aware of. Should it be based on retail cost? Or perhaps the lowest managed care contracted rate for that service? Should things such as salaries, facility costs, licensing costs, utilities, and professional licensing fees be factored in? Due to the lack of specific guidance, we suggest that counsel be involved to ensure that any rates are established appropriately to best preserve HSA contribution eligibility.

Q. How high does the deductible have to be to be a qualified HDHP?

A. For 2018, to qualify as a high deductible health plan for HSA-eligibility, the deductible must be $1,350 or higher for single coverage, and $2,700 or higher for other than single (family) coverage.

Q. How would an employer know the entitlement date?

A. It is possible the employer will not know when an employee becomes entitled to Medicare. It is not the employer's responsibility to know. If excess contributions are made to the employee's HSA due to the employee failing to remain HSA-eligible all year, the additional taxes and penalties will be assessed on the employee, not the employer.

Q. If someone has a life change event midyear and moves from a PPO to HDHP, can they contribute the full $6900?

A. Maybe. Under the "full contribution rule" (or "last month rule"), individuals may make a full year's contribution based on the HDHP coverage in effect on December 1st so long as the individual remains eligible to contribute to an HSA for a thirteen month testing period that starts on December 1st and runs until the following December 31st. For example, an individual who enrolls in HDHP coverage effective June 1st, 2018 would only be able to contribute 7/12 of the 2018 annual contribution limit under the standard rules; however, using the full contribution rule, the employee could make the full 2018 annual contribution so long as the individual remains eligible to contribute to an HSA from December 1st, 2018 through December 31st, 2019. If an individual takes advantage of the full contribution rule and fails to remain an eligible individual for the entire testing period, then the difference between what they would have been allowed to contribute without the full contribution rule and the amount actually contributed would be includable in gross income, and such amounts would also be subject to a 10% penalty tax.

Q. If the spouse is Medicare eligible and the employee is HSA eligible, can the spouse's expenses be reimbursed through the HSA even though they aren't eligible?

A. Yes, as long as the expenses are considered qualified medical expenses and aren't otherwise reimbursed. An HSA account holder can use funds from their HSA to reimburse qualifying medical expenses for the spouse and other tax dependents even if such individuals are not HSA-eligible.

Q. If there is time, could it be explained again regarding the deductible and how each family member has to meet the deductible. The part about an embedded plan.

A. If the other than single (family) HDHP plan design includes an embedded individual deductible, the embedded individual deductible must be at least the amount of the required minimum family deductible ($2,700 in 2018) in order to ensure that the HDHP does not begin paying before the minimum family deductible has been satisfied. In other words, expenses cannot be reimbursed for any of the covered individuals until collectively they have incurred $2,700 or more in medical expenses.

Q. If we make an employer contribution in January and we know an employee is leaving in February, can we prorate our contribution?

A. If the employer chooses to make a lump sum contribution rather than spacing out the contributions throughout the year, one of the risks is that a full contribution may be required for employees who do not remain employed all year. While there may be a bit more flexibility if the employer HSA contribution is handled through a cafeteria plan, if the employer makes the full contribution to all employees who are employed and eligible as of a particular date, the employer is likely obligated to make the full contribution even to those who may terminate employment shortly thereafter.

Q. If you work full time from 1/1/18-6/30/18 and want to make full contribution amount . If you end employment 7/1/18, what applies?

A. Assuming this individual was enrolled in a qualifying HDHP, had no other disqualifying coverage, and could not be claimed as a tax dependent, the individual would be able to contribute up to 1/2 of the annual contribution maximum.

Q. Is it better for a new employee to open a new HSA account or can they use their account contributed to while at their former employer?

A. The answer will depend upon whether or not the employer allows flexibility in regard to which HSA vendor is used. If the employer requires use of a particular vendor for purposes of employer HSA contributions or employee HSA contributions via salary reduction, it may be beneficial to open a new HSA. The HSA funds from the previous vendor could be rolled over into the new HSA to consolidate if that's easier.

Employers have the option to designate and require use of a particular HSA vendor, or to forward contributions to each employee's chosen HSA trustee/custodian. It adds to the administrative hassle for the employer if they choose to allow use of different vendors. In addition, if the employer chooses to forward contributions to a particular vendor, or chooses not to facilitate the process at all, the employees still have the option to open an HSA account and contribute on their own.

Q. Non-service related disabilities covered by the Veterans Administration - do the old contribution rules still apply?

A. Yes. Individuals who don't have a disability rating from the Veterans Administration (VA) are ineligible to contribute to an HSA if medical benefits have been received from the VA during the previous three months. If an individual has not received disqualifying services in the previous three months, the individual will be HSA-eligible.

Q. Not sure if this was gone over already, but are the funds in the HSA account only allowed to be used for medical expenses forever? (even after the age of 60)

A. Yes. Once funds have been contributed to an HSA, the funds remain available to reimburse the qualifying medical expenses of the HSA account holder, or the account holder's spouse and tax dependents until the funds are exhausted (indefinitely).

Q. On spouse eligibility if they are Medicare entitled does this affect the employer contribution? We contribute per level so like $100 per month for EE+SP but only $50 for EE only. Do we need to adjust our contribution

A. If an employee is not eligible to contribute to an HSA (e.g. due to Medicare entitlement), the employee is not eligible to receive HSA contributions from the employer either. If the employer is aware that an employee is not HSA-eligible, employer HSA contributions should be terminated or pro-rated accordingly.

Q. Our medical HDHP plan is setup from June 1 to may 31, besides the "last month rule", anything else that I need to worry about?

A. Even if the HDHP runs on a non-calendar year basis, the HSA maximum contribution limits apply on a calendar year basis.

Q. Sorry, I think you just answered this but I was distracted for a moment. Excess contributions - can these be removed through 04/15 or does this have to removed by 12/31.

A. Individuals have until their tax filing deadline (generally April 15th) to request a curative distribution for excess contributions.

Q. These prorated HSA rules are so challenging - admin-wise even with coverage changes. so I change to Family on December 1 coverage am I allowed to make the full family contribution or is this still prorated?

A. Yes, this is another benefit of the full contribution rule. Whatever coverage tier is in effect as of December 1st determines what the "full contribution" can be. The key is staying HSA-eligible through the entire next year (i.e. for the 13-month testing period).

Q. Through a Cafeteria 125 Plan, can an employer open up an HSA account "automatically" for a new hire?

A. Typically opening an HSA will require consent and paperwork with signatures from the employee, so it may not be possible to "automatically" open an HSA on behalf of an employee.

Q. We contribute to our employee's HSA on a bi-weekly basis with payroll. Many of our employees who were HSA eligible effective 1/1/2018 have not yet opened their account. As employees open their accounts late, they are asking about retroactive contributions. The regulations are clear that you cannot use funds from your HSA to pay for services incurred prior to the account being opened. Should it follow that retro contributions cannot be made for a time period that the account wasn't opened?

A. While HSA funds are available to reimburse only those qualifying medical expenses incurred after the HSA is established, contributions for any given year may be made any time after the tax year begins (January 1) or, if later, after the HSA is established, up until the filing due date for the individual's tax return (generally April of the following year).

Assuming the employer HSA contributions are run through the cafeteria plan, the employer could put a policy in place under which employees who do not open their HSA within a certain time frame forfeit some or all employer HSA contributions, but it would also be okay to still make the full contribution retroactively.

Q. We have a husband and wife employed and both have an HDHP. and we have an HSA for employees, can they both contribute pretax to one HSA?

A. Yes, assuming both spouses (employees) are HSA-eligible, they can both make HSA contributions via salary reduction so long as they follow the annual contribution maximum rules. If they are each enrolled in single HDHP coverage, they may each contribute up to $3,450 in 2018 (+$1,000 more each if they are 55 or older). If they are enrolled in other than single (family) HDHP coverage, together they cannot contribute more than $6,850 in 2018 (+$1,000 more each if they are 55 or older).

Q. We have been told that if you have adult dependents that are covered by your HDHP, they can contribute to their own HSA but you can't contribute to a family HSA unless either that person or someone else in your family is a tax dependent. It sounds like you disagree with that.

A. For any individuals covered under the family HDHP who do not have other disqualifying coverage and who cannot be claimed as a tax dependent, the individual is HSA-eligible and may contribute up to the family annual maximum for the year. The exception is for spouses, who cannot together contribute more than the family annual maximum if they are both HSA-eligible. If there is an adult child, domestic partner, or other individual enrolled in the family HDHP who cannot be claimed as a tax dependent, it's possible both the employee and such individual could contribute up to the family annual maximum.

Q. We have our HSA contributions done through a cafeteria plan with pre-tax payroll deductions and we do an employer match. However because we would fail discrimination testing, we do not allow shareholder owner/employees to do pre-tax contributions (they are done as post-tax payroll deductions). Does that then trigger the comparability rules?

A. No. The comparability rules apply only if the employer HSA contributions are made outside a cafeteria plan.

Q. What about if the company is covering expenses for executive physicals? Does that disqualify them from the HDHP?

A. It depends upon what is involved in the executive physicals. If anything beyond preventive care is provided, it may interfere with HSA-eligibility.

Q. What are the requirements for employers to report employee HSA contributions on W-2s?

A. Employers must report all employer contributions to employees' HSAs in Box 12 of Form W-2, using code W. For this purpose, employer contributions include all contributions made through a cafeteria plan—even pre-tax salary reductions. And any employer HSA contributions that aren't excludable from the employee's income must be reported in Boxes 1, 3 and 5. See page 11 of the General Instructions for Forms W-2 and W-3 at https://www.irs.gov/pub/irs-pdf/iw2w3.pdf.

Q. What are the rules for Domestic Partners?

A. If both domestic partners are enrolled in qualifying HDHP coverage and do not have other disqualifying coverage, each may contribute to an HSA up to the annual maximum based on the tier of coverage (i.e. single or family) so long as one is not considered a tax dependent of the other (which is rarely the case). However, the HSA funds of one domestic partner will typically not be available to reimburse expenses of the other domestic partner unless the domestic partner can be claimed as a tax dependent.

Q. What if an employee has a mid year status change going from non-single coverage to single coverage? How does the pro-ration amount work for that employee? What if they had front loaded the account at $6,900 in a month in which they were eligible for the non-single contribution amount?

A. The employee could contribute a pro rata portion of the family annual contribution limit for the months covered under family HDHP, plus a pro rata portion of the single annual contribution limit for the months covered under single HDHP. The amount will be something less than $6,850 for the year, so if the employee already contributed the full amount, it will be necessary to request a curative distribution before April 15th of next year to avoid excess contribution penalties.

Q. What if a member has Medicare and is on an HSA. They also cover their spouse under the plan. Can the spouse open an HSA account to put money away per-tax?

A. The spouse could open their own HSA and contribute, but would have to contribute on an after-tax basis and then claim an above-the-line deduction when filing the personal tax return, unless the spouse has the option to contribute to an HSA through a cafeteria plan sponsored by the spouse's employer.

Q. What is a qualified HDHP?

A. A qualifying high deductible health plan (HDHP), which allows for HSA-eligibility, must meet minimum deductible and out-of-pocket (OOP) requirements.

- 2018 Minimum Deductible: Single (individual) – $1,350, Other than single (family) – $2,700
- 2018 Minimum out-of-pocket (OOP): Single (individual) – $6,650, Other than single (family) – $13,300

Q. When embedded, does the Family HAVE to be 2x the individual deductible if the individual is the $2700 required? Could it be $2700 individual / $5200 family. Basically, only having to increase the individual deductible for 2018 and not the family

A. No. So long as the embedded individual deductible is at least $2,700 (in 2018), the difference between the embedded individual deductible and family deductible doesn't matter.

Q. When you say ineligible, you are saying that just the costs associated with ineligible treatments etc., are ineligible to be reimbursed correct? Or do they make you ineligible to have the account and deposit into it?

A. In order to be HSA-eligible, an individual must have qualifying HDHP coverage, must not have any other disqualifying coverage, and cannot be claimed as a tax dependent. If the individual is not HSA-eligible, the individual cannot contribute money to the HSA.

On the other hand, an individual does not have to be HSA-eligible to use funds in an HSA. Once the funds are contributed to an HSA, the funds may be used to reimburse qualifying medical expenses of the account holder, and the account holder's spouse and tax dependents until the HSA funds are exhausted. This is true even if the account holder is no longer HSA-eligible.

Q. Who is monitoring how much is contributed?

A. The IRS.

Q. Under HDHP requirements regarding not reimbursing before the participant has paid a minimum amount (Single $1,350) out of their own pocket. Does this mean staff cannot use their HSA debit cards until they have spent $1,350 out of pocket?

A. No. So long as the coverage provided under the HDHP is not available until the individual has satisfied the plan deductible, the HSA may be used immediately to cover qualifying medical expenses incurred due to plan coverage not being available.

Q. What if you were in a vehicle accident and you used HSA funds for doctor visits because the vehicle insurance didn't pay up front. Once reimbursed by the auto insurance PIP or the person's insurance that hit you, are you required to reimburse your HSA account?

A. If the distribution was made "because of a mistake of fact due to reasonable cause," the money can be returned to the HSA by April 15th to avoid taxes and penalties. The example given by the IRS in Notice 2004-50 involves an HSA account holder who reasonably, but mistakenly, believed that an expense was a qualified medical expense when he requested and received reimbursement for that expense from his HSA. If there is reason to believe the expenses are likely to be reimbursed by insurance, it may be difficult to argue a mistake.

NOTE - Trustees and custodians are not required to allow mistaken distributions to be returned. If it cannot be considered a mistake, or the trustee does not allow the funds to be returned, the individual would have to pay additional taxes and penalties on the amount, unless the individual incurs enough other eligible expenses (beyond those covered by insurance) and has appropriate documentation to match the total withdrawn from the HSA for the year.

Q. If policyholder has Employee & spouse coverage but is ineligible to contribute due to enrolled in Medicare and Spouse isn't eligible for Medicare and is over 55, can catch-up contribution be made? What would be the maximum contributions limit be for the year?

A. If the spouse is HSA-eligible and opens up his/her own HSA, the spouse could make a catch up contribution up to $1000 depending upon how many months the spouse is HSA-eligible during the year.

Q. What is the maximum an employer can contribute to and HSA?

A. The 2018 annual maximum contribution limits are as follows:

- Maximum self-only HDHP (individual) annual contribution = $3,450
- Maximum other than self-only HDHP (family) annual contribution = $6,850

HSA contributions may be made by the HSA account holder or by any other person, including an employer or family member, but combined cannot exceed the annual contribution limit. In other words, the most the employer could contribute would be $3,450 or $6,850 depending upon the tier of HDHP coverage; and if the employer contributes the full annual amount, the employees could not contribute anything more.

Q. Can a person be covered by two qualifying HDHPs and still be eligible for an HSA?

A. Yes. So long as the individual doesn't have any disqualifying coverage, having dual coverage under two qualifying HDHPs would not prevent HSA-eligibility.

Q. If I understand you correctly, I can FUND my HSA to the family maximum if I have family coverage, but I can only use the HSA funds on someone who is my tax dependent. In other words my adult child who is still on my health insurance qualifies me to contribute to my HSA to the Family maximum, but I can't use any of the HSA funds to pay that child's medical expenses. Is that correct?

A. That could be correct. While an adult dependent child under age 26 will typically be eligible to enroll in the employer's HDHP, HSA funds of the parent might not be available to reimburse the medical expenses incurred by the adult child.

A. Funds from an account holder's HSA may be used to reimburse qualifying medical expenses for the account holder, as well as the account holder's spouse and dependents, to the extent that those expenditures are not reimbursed by insurance or from any other source. Generally, a taxpayer may treat someone as their dependent for purposes of the personal exemption if the individual is (a) the taxpayer's child and under age 19 at the end of the tax year; (b) the taxpayer's child, a student, and under age 24 at the end of the tax year; or (c) a member of the taxpayer's household (other than the taxpayer's spouse) for whom the taxpayer provided over half of the support for the year and whose gross income does not exceed the personal exemption amount. For purposes of HSA reimbursement, this definition is broadened slightly to also include:

- an individual who is married and files a joint return with another taxpayer;
- an individual who could have been claimed as a dependent but who received more than the exemption amount in gross income; and
- an individual who could have been claimed as a dependent, except that the HSA account holder, or spouse if filing jointly, was claimed as a dependent on someone else's tax return.

Q. Can you use HSA dollars to pay for a long term care policy?

A. Yes. HSA funds are available to reimburse long-term care insurance. The amount that can be treated as a tax-free HSA distribution is limited to the amount of an individual's "eligible long-term care premium," an amount which is based on the individual's attained age as of the close of the taxable year.

Q. As an employer, are we responsible for the interpretation of all of these gray areas?

A. The employer's responsibility in regard to determining HSA-eligibility is fairly limited. Ultimately the employee will pay the additional taxes and penalties if monies are contributed to an HSA when they should not have been (or in excess of the contribution limit). However, employers should be careful when determining various plan offerings and how they may impact HSA-eligibility. If the employer is offering benefit options that may interfere with HSA-eligibility, the employer may not be able to make contributions on a tax-favored basis for those individuals which should be known to be ineligible based on enrollment/participation in other benefit options.

Q. Employer contributes a fixed amount per paycheck to H.S.A.s for all employees, some of whom do NOT participate in the employer's HDHP plan. What is the employer's responsibility to make sure that the employees not enrolled in the HDHP plan are H.S.A. eligible?

A. Employers have a fairly limited responsibility in regard to determining HSA-eligibility. See IRS Q&A #81 from Notice 2004-50:

Q-81. Are employers who contribute to an employee's HSA responsible for determining whether the employee is an eligible individual and the employee's maximum annual contribution limit?

A-81. Employers are only responsible for determining the following with respect to an employee's eligibility and maximum annual contribution limit on HSA contributions: (1) whether the employee is covered under an HDHP (and the deductible) or low deductible health plan or plans (including health FSAs and HRAs) sponsored by that employer; and (2) the employee's age (for catch-up contributions). The employer may rely on the employee's representation as to his or her date of birth.

However, it may be in the employer's best interest to provide some education to employees regarding HSA-eligibility and contribution limits, perhaps even asking employees to certify that they meet the criteria to be an eligible individual for HSA purposes.

Q. Are the owners of the company eligible?

A. Yes, any individual who is enrolled in qualifying HDHP coverage, does not have any disqualifying coverage, and cannot be claimed as a tax dependent is eligible to contribute to an HSA. Whether or not the employer can contribute on a tax-favored basis, or whether the individual may contribute via salary reductions on a pre-tax basis will depend upon the type of entity involved. Sole proprietors, partners and 2% or more S-Corp shareholders are not considered employees and therefore not able to participate in a cafeteria plan. Contributions by such individuals would need to be made on an after-tax basis and then taken as an above-the-line deduction when filing a tax return.

Q. If a new hire had an FSA with their former employer, once it is closed and zeroed out, would they become eligible for an HSA if they enroll in a qualifying HDHP in the same year?

A. Yes. Once an individual is no longer covered under a general-purpose health FSA, the individual is eligible to contribute to an HSA (assuming the individual is otherwise HSA-eligible).

Q. With regards to contribution limits, are rollovers considered part of that for that calendar year?

A. If an individual chooses to rollover HSA dollars from another HSA, such rollover dollars do not count toward the annual contribution maximum. However, if the individual is taking advantage of the one-time rollover option from an IRA, such dollars would count toward the annual contribution maximum.

Q. Would remaining eligible for the testing period with a mid-year change just mean staying enrolled in an HSA regardless of coverage level?

A. Yes, that's correct. For purposes of the full contribution rules, so long as the individual remains enrolled in an HDHP, whether single or family, for the entire 13-month testing period, the individual is able to make the full contribution without incurring additional taxes or penalties.

Q. I am covered with my wife, both are over 55 and both have separate HSA bank accounts. Can each contribute the additional $1,000 catch up?

A. If both spouses are HSA-eligible and each spouse has their own HSA, each may contribute up to $1,000 additional for the year (up to $2,000 more between the two).

Q. Is there a de minimus rule or exception for accidentally using H.S.A. funds for non-qualified distribution?

A. No. If funds from the HSA are used for non-qualifying medical expenses, the distribution is included in the account holder's gross income and generally is subject to an additional 20% tax. However, if it was a mistake, there may be an option to return the money to the HSA prior to April 15th of the following year. Or if enough other qualifying medical expenses are incurred during the same year, the individual could avoid having to include the amount in gross income and pay the penalty tax.

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