

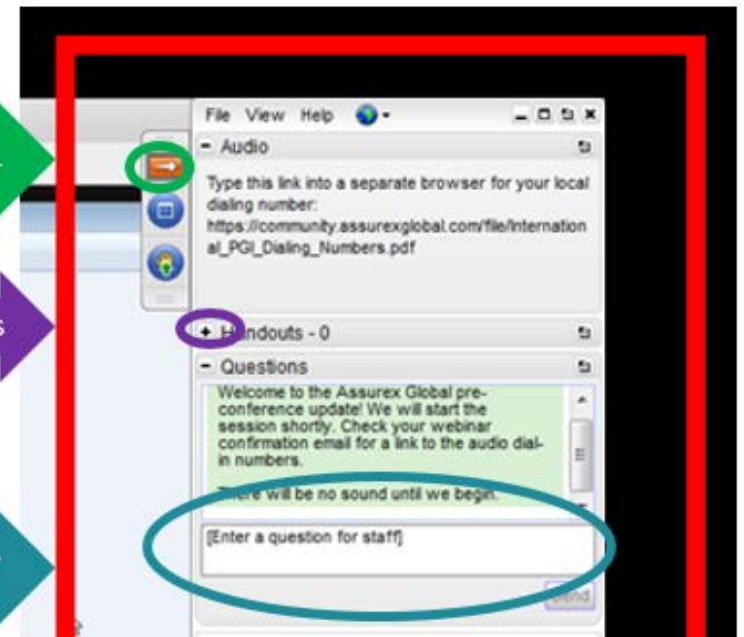
February 22, 2018

# 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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# Agenda

- HSA Eligibility
- HSAs and Health FSA
- HSAs and Medicare
- HSA Contribution Rules
- HSA Distributions

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# HSA Eligibility

- Who is an HSA Eligible Individual?
  - Must be enrolled in a qualified High Deductible Health Plan (HDHP) and may not have any other “disqualifying coverage”
  - Only eligible individuals can make contributions to their HSA account
  - Ineligible individuals may still use funds already in their HSA account to pay for eligible unreimbursed medical expenses
- What Makes an Individual Ineligible to Make or Receive HSA Contributions?
  - Individuals enrolled in non-HDHP disqualifying or (non-qualified HDHP) coverage
  - Individuals who can be claimed as someone else's tax dependent
  - Individuals entitled to Medicare

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# HSA Eligibility

- Eligibility Period

- HSA eligibility is determined on a month-by-month basis as of the first day of the month
- Example:
  - Employee covered by employer's HDHP as of Jan. 1<sup>st</sup>
  - Spouse gets a job and adds employee to spouse's non-HDHP plan Aug. 1<sup>st</sup> and employee is covered by spouse's plan through the end of the year
  - Employee HSA-eligible for 7 months (Jan. 1<sup>st</sup> – Jul. 31<sup>st</sup>)
- More on how this effects contributions later...

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# HSA Eligibility

- Types of Permitted Coverage
  - Qualified HDHP
  - Limited-purpose or post-deductible health FSAs and HRAs
  - Specific disease or hospital indemnity policies
  - Most EAPs, wellness programs and disease management programs are permitted as long as the program “...does not provide significant benefits in the nature of medical care or treatment...”
    - Screening and preventive care are not considered significant medical care
  - Beginning Jan. 2016, receipt of VA hospital care or medical services “for a service-connected disability”

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# HSA Eligibility

- **Disqualifying Coverage**
  - Health plans with deductible or OOP less than the HSA statutory minimum
  - General-purpose health FSAs
  - Medicare, Tricare, and Medicaid
  - HRA reimbursing claims below the HSA minimum deductible
  - On-site medical clinics providing care at below fair market value
  - Executive reimbursement plans (unless limited to annual physical)
- **Questionable or Unclear in Guidance**
  - Health care concierge arrangements
  - Medical tourism benefit



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# HDHP Requirements

- Qualified HDHPs Must Meet Two Requirements:
  - The plan must have a maximum out-of-pocket (OOP)
  - The plan must not reimburse claims before the participant has paid a minimum amount out of their own pocket (the minimum deductible)
- Maximum OOP
  - 2018 HDHP maximum OOP
    - Single - \$6,650, Family (other than single) - \$13,300
  - Note that ACA rules for OOP maximums for non-grandfathered plans are different
  - 2018 health reform maximum OOP
    - Single - \$7,350, Family (other than single) - \$14,700
    - Beginning in 2016 the health reform self-only OOP limit applies to each individual even those with family, or other coverage.
  - Non-grandfathered HDHP plan must be designed so that no individual must pay more than the health reform individual OOP max, even though HDHP rules would allow a higher max OOP

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# HDHP Requirements

- 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
  - 2018 minimum deductible is based on the level of coverage carried by the employee
    - Single - \$1,350, Family (anything other than single) - \$2,700
  - Embedded deductibles
    - Embedded individual deductible for someone with coverage other than single cannot be less than the family deductible (i.e. \$2,700 in 2018)
      - Not a qualified HDHP
        - Family HDHP has a \$5,000 deductible and an embedded individual deductible of \$2,500 (less than \$2,700)
      - Qualified HDHP
        - Family HDHP has a family deductible of \$6,000 and an embedded individual deductible of \$3,000 (more than \$2,700)

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# HSAs and Health FSAs

- 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

# HSAs and Health FSAs

- HSAs and Health FSAs
  - Health FSA grace period or carryover provisions may extend ineligibility
    - 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
      - 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
    - 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

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# HSAs and Medicare

- HSAs and Medicare

- Individuals who are both eligible and enrolled (“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

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# HSA Contributions

- 2018 Limits
  - Maximum individual annual contribution = \$3,450
  - Maximum family annual contribution = \$6,900
- “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
- Contribution Rules
  - Excess or ineligible contributions are subject to a 6% excise tax
  - 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)

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# 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

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# HSA Contributions

- 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
- Example of Full Contribution Rule Combined with Age 55+ Catch-up Contribution:
  - 58 year-old individual first enrolls in self-only HDHP May – Dec, 2018 (8 mos.)
    - Under the full-contribution rule the individual may contribute \$4,450 during 2018 (\$3,450 + \$1,000)
      - Individual must remain HSA eligible until December 31, 2019
    - OR
    - Individual may contribute \$2,966.67 during 2018 (8/12 of \$3,450 + 8/12 of \$1,000)
      - In this case the individual does not need to maintain eligibility through 2019



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# 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

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# 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

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# 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

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# 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

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# 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 is not HSA eligible
    - 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

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# HSA Distributions

- Distributions (Reimbursements)
  - 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
    - Other qualified expenses
      - COBRA or USERRA coverage
      - A health plan for individual receiving unemployment compensation
      - Account holders age 65+ can use HSA funds to pay for health insurance other than a Medicare supplemental policy
  - Expenses must not be reimbursed by insurance or other source

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# HSA Distributions

- Other Distributions Rules

- Expense must be incurred after the HSA was established
- 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
  - Regardless of eligibility to contribute to an HSA, funds in the HSA remain available to reimburse qualified medical expenses
- Distributions for non-qualified expenses subject to income tax and a 20% excise tax

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