

July 28, 2016

# **HRA/HSA Compliance & Administration Issues**

Presented by Regan Debban & Bob Radecki,  
Benefit Comply

# ACA & Benefits Compliance Update

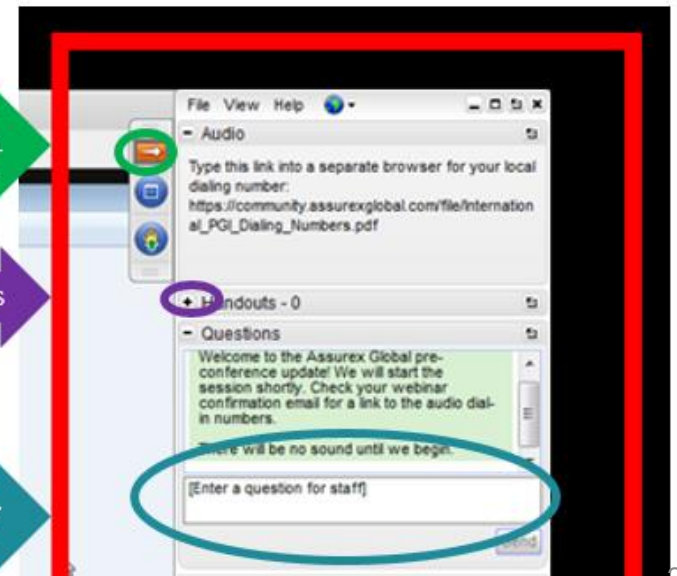
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- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
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#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

- Marketplace/Exchange Notices to Employers – Appeal or Not?
- Health Reimbursement Arrangements (HRAs)
- Health Savings Accounts (HSAs)

## Marketplace/Exchange Notices to Employers

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## Exchange Notices to Employers

- Exchanges are beginning to notify employers if an employee receives a subsidy, giving employers an opportunity to appeal
  - The Federal exchange began sending notices in June 2016 for employee receiving a subsidy sometime in 2016
    - No notices were sent by Federal exchange regarding 2015 subsidies
  - A few state run exchanges started sending notices earlier
- Employers are not require to appeal...should employers appeal?

Maybe!

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# Exchange Notices to Employers

- Things employers need to consider regarding an appeal
  - Just because the employer receives a notice does not mean they will actually owe a §4980H penalty payment
    - Determination of whether §4980H payments apply is determined by reconciliation directly with the IRS through the employer reporting process (Forms 1094/1095)
    - Regardless of whether employers appeal, there will be a chance to reconcile with the IRS before a §4980H payment is imposed
      - What does that process look like? Maybe shorter timeframes and more hassle?
  - The appeal process varies from state-to-state, but in general involves filing a paper appeal, providing documentation, and in some cases participating in a hearing
    - Over half of the states are using the federal process found at <https://www.healthcare.gov/downloads/marketplace-employer-appeal-form.pdf>
    - Others have designed their own process

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# Exchange Notices to Employers

- Things employers need to consider regarding an appeal
  - If minimum value, affordable coverage was not offered, there is nothing to appeal
  - If minimum value, affordable coverage was offered...
    - Small Employers (less than 50 FTEs)
      - No penalty risk under §4980H
      - Employer could appeal to prevent an employee from incorrectly receiving a subsidy, but it may be easier simply to have a direct conversation
    - Applicable Large Employers (50 or more FTEs)
      - Part-time employees
        - No penalty risk under §4980H
        - Employer could appeal to prevent an employee from incorrectly receiving a subsidy
      - Full-time employees
        - Employer may want to appeal for full-time employees who were offered minimum value, affordable coverage, but could wait and reconcile via employer reporting (Form 1094-C and 1095-C)

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# Exchange Notices to Employers

- Other Subsidy Notice Thoughts
  - Employers may want to communicate to employees that they received the notice
    - Employees may not understand they are not eligible and could face the possibility of paying some or all of the subsidy back to the IRS
    - Exchange will notify employee if employer appeals
  - Even full-time employees who are offered what employer thinks is “affordable” coverage may still be eligible for a subsidy
    - There are 2 kinds of affordable – individual subsidy affordability and employer safe harbor affordability
      - Subsidy eligibility is based on household income, which the employer does not know
      - Employers can avoid penalties by using one of the IRS employer affordability safe harbors, and report it on Form 1095-C (Line 15)
        - Form W-2 Wages
        - Rate of Pay
        - Federal Poverty Level

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## ACA Subsidies

- Subsidies When Buying Individual Health Insurance for People who are also Eligible for Employer Plans
  - Subsidies not available to individuals eligible for “affordable” employer-sponsored “minimum value” coverage
    - Affordable = Employee contribution for single (employee-only) coverage is no more than 9.66% (9.56% in 2015) of household income
      - Household income = modified adjusted gross income (MAGI)
    - Minimum Value = plan with actuarial value of at least 60%
  - Affordability for family members
    - An employee’s family member qualification for subsidy is based on the employee’s contribution for employee-only coverage

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# Affordability

- ACA “Affordability” Example

- Employer’s lowest hourly rate of pay is \$10 per hour
  - Using the rate of pay safe harbor the employer decides to set employee contribution for single coverage at \$125.00
  - $130 \text{ hours} \times \$10/\text{hr} = \$1,300$  then  $\$1,300 \times .0966 = \$125.58$
- One full-time employee earns \$1,300 per month, but pays \$300/mo. in alimony
  - Alimony payments are an “above the line” deduction reducing AGI
  - This individual's monthly AGI = \$1,000, and the contribution for single coverage (\$125.00) equals 12.5% of household income
- This employee would qualify for a subsidy when purchasing individual insurance through a public Exchange, but the employer would face no §4980H(b) liability due to meeting the rate of pay safe harbor

## Health Reimbursement Arrangements (HRAs) & Health Savings Accounts (HSAs)

# HRA/HSA Comparison Chart

	Health Reimbursement Arrangement (HRA)	Health Savings Account (HSA)
Year Authorized	2002	2003
Eligibility	Depends on Employer	Enrolled in HSA qualified high-deductible plan, with no other non-qualified coverage
Requirements for Associated Health Plan	None, but usually paired with high deductible plan	Minimum deductible and maximum OOP limits set annually by regulations
Contribution Source	Employer only	Employer or Individual
Contribution Maximum	Employer determines	Set annually by regulations
Plan Design and Withdrawal Rules	Funds used for eligible health care expenses - employer determines plan design	Individual Controls Distributions - Tax-free only for qualified medical expenses
Carryover/Rollover	Employer determines if unused funds may be rolled over or vested	Unused funds rolled over and are portable

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## Health Reimbursement Arrangements (HRAs)

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# Health Reimbursement Arrangements (HRAs)

- HRA Requirements

- HRAs must be funded solely with employer contributions
- No cafeteria plan or employee pre-tax funding
  - HRA may be offered in conjunction with an HDHP that is offered under a cafeteria plan, and the employee portion of the premium may be paid with pre-tax salary reductions or flex credits
- Partners, S-Corp 2% or more owners, and sole-proprietors may not participate

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# Health Reimbursement Arrangements (HRAs)

- HRA Reimbursements
  - HRA coverage must be in effect at the time the expense is incurred
    - Claims incurred after termination of employment may be reimbursed if HRA permits participant “spend down”
  - Reimbursements only for substantiated medical expenses described in Code § 213(d) that have not been reimbursed by another plan
    - Unlike HSAs (no third-party adjudication is required), HRA benefits must be substantiated like any other excludable employer-provided health benefit
    - Insurance premiums are generally reimbursable, but HRAs may not be used to pay for individual health insurance premiums
  - New HRA coverage coordination rule
    - Applies for plan years beginning in 2017 for HRAs in place prior to 2016
    - An HRA may only reimburse qualifying medical expenses of individuals that are also enrolled in a group health plan (e.g. self-only coverage HRA may only reimburse the employee’s expenses)

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# Health Reimbursement Arrangements (HRAs)

- Roll-over and Cash-out
  - Roll-over is allowed
  - No cash-out of unused amounts
    - Revenue Ruling 2005-24 - An arrangement fails to qualify as an HRA if it provides a direct cash payment to the participant
- HRAs and Nondiscrimination
  - HRAs subject to Section 105(h) nondiscrimination rules
    - Cannot discriminate in favor of highly compensated employee (HCEs) with respect to Eligibility or Benefits
    - Treated as a self-funded plan, so delay in effective date for ACA non-discrimination rules does not apply to HRAs

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# HRAs and COBRA

- HRAs and COBRA
  - HRAs must offer COBRA continuation
  - Each qualified beneficiary has an independent right to elect COBRA
    - COBRA continuees entitled to continuing annual HRA accruals
  - COBRA premium for an HRA
    - COBRA premium NOT based on individual's account balance. Under the safe harbor approach, the premium is "blended" so that it is the same for all HRA qualified beneficiaries, regardless of their account balances
      - Actuarial method
        - Reasonable estimate of the cost of providing coverage for such period for similarly situated beneficiaries
      - Past-cost method
        - New HRAs cannot use the past-cost method
        - And carryovers may also prohibit use of this method

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## HRAs and the ACA

- HRAs that cover 2 or more employees must be integrated with a group health plan to avoid violating health care reform rules (e.g. no annual/lifetime limits)
  - Health care reform requirements do not apply to retiree-only HRAs or HRAs that reimburse only excepted benefits
- An integrated HRA must meet certain criteria:
  - Employer sponsoring the HRA must also offer a group health plan that does not consist of only excepted benefits
  - Employee receiving the HRA must be enrolled in a group health plan, regardless of whether the employer sponsors the plan (e.g. spouse's group health plan)
  - Employee must be permitted to opt out of and waive future HRA reimbursements at least annually
  - Upon termination of employment, either remaining amounts in the HRA are forfeited, or employee must be permitted to opt out of and waive future HRA reimbursements

## Health Savings Accounts (HSAs)

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# Health Savings Accounts (HSAs)

- Eligible Individuals
  - 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
- Who is an Eligible Individual?
  - Must be enrolled in a qualified High Deductible Health Plan (HDHP) and may not have any other “disqualifying coverage”
  - Individuals who cannot have an HSA
    - Individuals enrolled in non-HDHP coverage
    - Individuals who can be claimed as tax dependents
    - Individuals entitled to Medicare

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# Health Savings Accounts (HSAs)

- HDHP Requirements
  - Minimum deductible
    - (2016) S - \$1,300, F - \$2,600
    - Embedded individual deductible cannot be less than family deductible
  - Maximum out-of-pocket (OOP)
    - (2016) S - \$6,550, F - \$13,100
    - Must have an embedded individual OOP maximum of \$6,850 or less to comply with ACA cost-sharing requirements
  - Preventive benefits can be first dollar coverage

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# Health Savings Accounts (HSAs)

- Disqualifying Coverage
  - Health plans with deductible or OOP less than the HSA statutory minimum
  - General-purpose health flexible spending accounts (HFSA)
  - HRA reimbursing claims below the HSA minimum deductible
  - Medicare, Tricare and Medicaid
- Types of Permitted Coverage
  - Limited purpose HFSA and HRAs
  - Specific disease or hospital indemnity policies
  - Most EAPs and wellness programs

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# Health Savings Accounts (HSAs)

- HSAs and Health FSAs
  - Participation in a general-purpose health FSA disqualifies an individual from contributing to an HSA,
    - Regardless of whether the individual is eligible under their own employer's health FSA or that of a spouse
  - Employees who participate in a health FSA may elect HDHP coverage, but will not be eligible to contribute to an HSA until the end of the health FSA plan year, regardless of whether or not the health FSA funds have been used or exhausted. Grace period or carryover provisions may extend ineligibility if funds rollover into the new plan year.
    - 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 grace period extends the participant's period of HSA ineligibility through the end of the grace period
    - Carryover –
      - Makes an individual ineligible for HSA contributions for the entire plan year (\$500 can be used any time during the year). Employer may allow participants to waive the carryover or make the carryover a limited purpose or post-deductible carryover

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# Health Savings Accounts (HSAs)

- 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 some individuals (i.e., those who are already receiving Social Security benefits when they turn 65). These individuals simultaneously become eligible, enrolled, and entitled upon reaching age 65
    - Choosing not to enroll in Part B does not help – Part A alone makes an individual ineligible to contribute to HSA
  - Other individuals become eligible for Medicare, but must file an application in order to become enrolled in benefits (e.g. working individuals who have attained age 65 and are eligible to receive Social Security benefits but have not applied for them)
    - NOTE – sometimes those choosing to delay Social Security benefits will be retroactively enrolled in Medicare (up to 6 months), which may affect the annual HSA contribution limit
  - 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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# Health Savings Accounts (HSAs)

- Contributions
  - 2016 Limits
    - Maximum individual annual contribution = \$3,350
    - Maximum family annual contribution = \$6,750
      - “Special Rule” for spouses – if one spouse has family coverage, both are treated as having family coverage, but together they cannot exceed the annual family contribution amount. The contribution limit is divided equally unless spouses agree on a different division
    - Excess or ineligible contributions are subject to a 6% excise tax
  - Rules
    - Eligibility determined monthly on the 1st day of the month
    - Contributions are calculated based on 1/12 of annual max times number of months that an individual is eligible (except for the full-contribution rule)
    - Contributions may not be made before the tax year begins or after the original filing due date for the individual’s tax return

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# Health Savings Accounts (HSAs)

- **Contribution Examples**

- Example 1 – Individual enrolled in self-only HDHP for May – Dec 2016 with no other disqualifying coverage
  - Individual may contribute \$2,233.33 during 2016 (8/12 of \$3,350)
- Example 2 – 58-year old individual enrolled in self-only HDHP for May – Dec 2016 with no other disqualifying coverage
  - Individual may contribute \$2,900 during 2016 (8/12 of \$3,350 + \$1,000)
- Example 3 – Individual enrolled in family HDHP for Jan – May of 2016 with no other disqualifying coverage
  - Individual may contribute \$2,812.49 during 2016 (5/12 of \$6,750)
- Example 4 – Husband is enrolled in self-only HDHP coverage during all of 2016 and wife is also enrolled in self-only HDHP coverage during all of 2016
  - Each spouse may contribute up to \$3,350 during 2016
- Example 5 – Husband is enrolled in self-only HDHP coverage during all of 2016 and wife is enrolled in family HDHP coverage during all of 2016
  - Maximum contribution between the spouses is \$6,750 during 2016

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# Health Savings Accounts (HSAs)

- Contributions (cont.)
  - Full-contribution rule
    - Mid-year enrollees in HDHP covered on December 1st can make full annual contribution to HSA
    - Must remain HSA eligible for full 13-month “testing period”
  - 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 – 58 year-old individual enrolled in self-only HDHP for May – Dec 2016 with no other disqualifying coverage
  - Individual may contribute \$2,900 during 2016 (8/12 of \$3,350 + \$1,000); OR
  - Under the full-contribution rule, so long as the individual remains enrolled through Dec 2017, the individual may contribute \$4,350 during 2016 (\$3,350 + \$1,000)

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# Health Savings Accounts (HSAs)

- **Employee Contributions**
  - Pre-tax through a Section 125 cafeteria plan; or
  - Directly and taken as a deduction
- **Employer Contributions**
  - Directly into employee HSA account; or
  - Through a Section 125 Cafeteria Plan

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# Health Savings Accounts (HSAs)

- Employer Contributions
  - Direct Contributions
    - Subject to the Comparability Rule
      - Same dollar amount or same percentage of the HDHP deductible for each comparable employee
      - Comparable employees determined by class of employee and coverage
        - Full-time vs. Part-time
        - Single vs. Other than Single
    - Non-comparable employer contributions subject to 35% excise tax!
  - Contributions via Section 125 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 non-discrimination testing
      - Often causes Section 125 testing problems for smaller employers

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# Health Savings Accounts (HSAs)

- 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
      - Regardless of eligibility to contribute to an HSA, any funds in the HSA remain available to reimburse qualified medical expenses for the account holder and any tax dependents (including the spouse)
      - Pub. 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
  - Expense must be incurred after the HSA was established
  - Distributions for non-qualified expenses subject to income tax and a 20% excise tax

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# Health Savings Accounts (HSAs)

- **Excess Contributions/Corrections**
  - 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 if possible
    - In order to avoid a 6% excise tax on the excess contributions, the employee should request a distribution of the excess contributions and earnings before the individuals' federal income tax filing deadline (including extensions)
- **Employee fails to open HSA account**
  - If employer contributions are made through a cafeteria plan, there is nothing further to be done and the employee will not receive the contributions
  - If contributions are made outside of a cafeteria plan, comparability rules require:
    - Employer must provide a written notice stating that each eligible employee who, by the end of February of the following calendar year must establish an HSA and notify the employer to receive a comparable contribution to the HSA for the current calendar year. The 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
    - Employer must make a comparable contribution by April 15 of the following calendar year to the HSA of each eligible employee who establishes an HSA and notifies the employer by the end of February in the following calendar year



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Thank you.