Webinar Title Q&A – the following questions were asked during the two Advanced HSA Concepts webinar sessions in September 2017

Q: If they are eligible for the annual max contribution based on 12/1 enrollment. Must they make the 2017 max contribution by 4/15/2018?

A: Yes, if they want to take advantage of being allowed to make the full contribution for 2017, they must make that contribution either through payroll by 12/31/17 or outside payroll by 4/15/18.

Q: Who is considered a "family member" when determining if someone is eligible for FSA? For Example - Brothers - one owns part of the company and the other just works for the company.

A: I assume this question is in regards to a Sub Chapter S Corporation in which owners and their family members are excluded from participation in a cafeteria plan. For this purpose the individuals disqualified from cafeteria plan participation will be a family member that is a direct ascendant or descendent of the owner. That would include the spouse of the owner and any other family members who are employees and are in the blood line from grandparent down through grandchild. This would not include brothers or sisters of the owner, brother in laws, sister in laws, etc.

As you have described above, if the brother works for the company and does not own a portion of the company, the non-owner brother would be eligible to participate in the cafeteria plan, including the HSA contributions on a pre-tax basis and any employer contributions made through the cafeteria plan.

The point that I was making when I brought up the ownership category is that it is possible for any taxpayer to open and contribute to an HSA if they have a qualified high deductible health plan. For purposes of contributing to the HSA through a cafeteria plan however, there are members of the ownership category that cannot contribute through the plan and would be required to make their contributions to the HSA directly to the HSA custodian outside of the plan and take their tax deduction on their personal tax returns.

Q: What if someone uses their HSA money and thinks they should not have used it for that expense? What should they do?

A: Keep in mind that the recordkeeping on the HSA will fall back on the employee and in the event of an audit, that individual would supply evidence that would support their HSA distributions for the tax year. It would seem reasonable that the individual could substitute another eligible expense during the same tax year to support their distribution. If they don't have an alternate expense incurred during the same

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tax year for substitution, technically it would be a non-qualified distribution that is self-reported as such and would be subject to income taxes and the 20% penalty.

Q: If an employer was making contributions to all employees voluntary benefits and they hire a new employee that says they have enough voluntary benefits and ask if they can make a contribution to an HSA account instead. Is this allowable? What other factors may they need to consider like notifying other employees of this so that there is no discrimination or do they need to wait to make this type of a change until the voluntary plan and POP plan year comes up for renewal?

A: This will depend upon how the employer has set this up. It is possible to amend a POP plan mid-year to add new options, so you would not necessarily need to wait until the start of the next plan year to modify any existing arrangement. The following describes possible scenarios.

- If the employer has a defined contribution in the insurance contract that only permits employees to apply the dollars to the voluntary benefits this would not be transferrable to the HSA.
- If the employer has a defined contribution in the cafeteria plan that is non-elective and can only be applied to the voluntary benefits this would not be transferrable to the HSA.
- If the employer has a defined contribution (i.e. flex credit) in the cafeteria plan that is an elective contribution, the employee can choose how to apply the dollars. Assuming one of the flex credit choices is using the dollars towards an HSA the employee can turn down one benefit and apply dollars to another option.

Q: If both spouses covered by a HDHP family plan are over 55, can one spouse contribute $7,900 AND the other have a separate HSA for $1,000?

A: For 2018, one spouse over 55 can have an HSA for $7,900 ($6,900 + $1,000) and the other spouse over 55 can have a separate HSA and deposit $1,000.

Q: Do HDHP insurance plans that cover preventive care such as physicals 100%, qualify for HSA?

A: Yes, first dollar coverage for preventive care is not considered disqualifying coverage.

Q: Do you know if the 2018 Health Care FSA Limit will be changing or will still be $2,600?

A: Based upon the cost of living indicators published in August 2017, the projected increase to the Health Care FSA is $50 or an annual maximum of $2,650 for 2018. The IRS will typically, officially announce any applicable increase to the Health Care FSA in October.

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Q: Can you have co-pay for limited preventive prescriptions on a HDHP with an HSA?

A: If a prescription is determined to be preventive, it would be possible to have co-pays and not be considered disqualifying coverage.

Q: If a recent new hire had an FSA at prior employer, can that new hire contribute to our company's HSA program (we do not have an FSA plan available to ees)? If so, can the new hire contribute up to the IRS annual HSA EE maximum or does the contribution have to be reduced by the amount they contributed to the prior employer's FSA plan? (I do not know what type of FSA plan the prior employer offered.)

A: HSA eligibility will depend upon a couple of things.

- If they were enrolled in a Limited Health Care FSA or a Dependent Care FSA, neither of these has any impact on HSA eligibility.
- If the new hire employee had a Health Care FSA at the prior employer and did not elect to continue the Health Care FSA under COBRA, they are immediately HSA eligible with your plan as soon as they enroll in the qualified high deductible health plan. It is also possible that they are in a runout period to file claims against the election for services incurred prior to the termination date with the old employer without disqualifying them from your HSA primarily because the runout period is simply an administrative time to file paperwork. So assuming that that the new hire is eligible to contribute to the HSA, the full contribution rule would permit the employee to contribute the full annual amount based upon the type of coverage they have on 12/1. They can retain the tax benefits for the entire year if they remain on a qualified HDHP for the entire next calendar year.
- If the new hire employee enrolled in COBRA for the Health Care FSA at the prior employer, the Health Care FSA would be considered disqualifying coverage. If they pay the COBRA premiums through end of the plan year at their prior employer that could also potentially trigger the grace period or rollover which would further delay HSA eligibility.

Q: A spouse that is on Medicare cannot have an HSA even if enrolled in our HDHP.

A: Correct.

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Q: If the employee does not have Medicare, they can contribute to the HSA but can that employee contribute family level ($6,750) if the spouse is still covered.

A: The HSA eligibility and contribution level is based upon the HSA accountholder. So if your employee has family coverage, is not enrolled in Medicare, they can contribute the family HSA amount even if their spouse is enrolled in Medicare.

Q: If renew in 2016 non calendar year can you keep the old minimum deductible? When do you need to update your plan design to reflect the 2018 limits?

A: In order to be a qualified HDHP, for non-calendar year plans you must have the 2018 minimum deductible and out of pocket limits for the first plan year that renews on or after 1/1/18.

Q: If the adult child opens an HSA, then their contribution must be after tax, right?

A: The adult child can open an HSA and make contributions after tax and then they would take the tax deduction at the end of the year on their personal tax returns.

Q: But did you mean that the adult's child's parent(s)' HDHP is family plan the adult child can also contribute to family maximum contribution?

A: It is possible that both the parent and the adult child can each have their own respective HSAs and each can contribute the family limit, when you have an adult child, who is not an income tax dependent of the parent that is covered under a parent's health plan.

Q: What then would be the max contribution for the parent and then for the child?

A: The maximum contribution for the parent for 2017 is $6,750 plus any $1,000 catch up contribution for anyone over the age of 55. If both the parents are over 55, one spouse will need to deposit their $1,000 catch up contribution into their own HSA.

The adult child that is not a tax dependent is eligible to open an HSA in their own name and deposit $6,750 for 2017.

Q: What are motivators for using an HSA compatible HRA to help support coverage of out-of-pocket medical expenses versus a lower deductible (to IRS minimum deductible)?

A: Typically employers like HRAs for the following reasons: 1) They can control the reimbursement of expenses because they are able to define what is eligible and employees must show proof of the expense in order to be reimbursed; 2) This can become a safety net for employees who do have catastrophic expenses; and 3) They can use this as a cost control measure in that not all employees are going to be eligible for reimbursement based upon their expenses. Employees that experience cost below the threshold set up in the HRA before they are eligible for HRA reimbursement can use their HSA dollars for those expenses. Further, typically employers may only experience a 25-30% average reimbursement rate, which allows them to conserve the savings for a future plan year or benefit cost.

Q: Can a 59 year old covered under HDHP Jan-Jul (but now under a non HDHP), still make the catchup $1,000 contribution for 2017 or is it too late?

A: The contributions are based upon a calendar year so it would be possible to still make contributions up until 4/15/18 for 2017. However, they should be careful regarding contributions because if they were not covered under a HSA qualified plan for the entire year they are only allowed a prorated contribution for the year based upon the number of months they were enrolled in the qualified HDHP in 2017.

Q: Confirming that is from age 18 years through 26 years that they would need to establish their own H.S.A.?

A: This will depend upon whether or not the adult child is an income tax dependent of the parent. If the adult child is a full-time student and the parent claims them on their taxes as a dependent, the parent can use their HSA dollars for the adult child and the adult child is not eligible to open their own HSA.

The adult child can remain on the parent's health plan until age 26, however, if they are not an income tax dependent of the parent, then that is when the adult child can open and fund their own HSA and the parent is unable to use their HSA dollars for the adult child's expenses.

Q: Dependent day care falls under FSA also – right?

A: The Dependent Care FSA does not have any impact on HSA eligibility. It is only the general Health Care FSA that would be considered disqualifying coverage.

Q: Can you please repeat - so employers are NOT allowed to say we will match what you contribute? What is say after the EE deposits $500 for example, we will deposit $300. Would that work?

A: If an employer wants to make employer contributions outside of a cafeteria plan arrangement, matching contributions would cause the employer to fail the comparability rules and the employer would be subject to the 35% excise tax. Permissible contribution methods under the comparability rules would include: 1) Same dollar amount or same percentage of the HDHP deductible; 2) Differences based upon tiers of coverage as long as everyone in the tier is treated the same; 3) Excluding collectively bargained employees; and 4) Treating Non-Highly Compensated Employees more generously.

If an employer sets up the employer contribution to the HSA inside of a cafeteria plan arrangement (BESTflex or Premium Only for example), it is possible to structure the employer contributions so they match what the employee contributes and the employer would be able to limit their contributions (i.e. employer will match dollar for dollar up to $50 per month single and dollar for dollar up to $100 per month for family for example). Keeping in mind however, that the HSA contributions made under this method will be included in the annual nondiscrimination testing and any failure of the testing may result in taxable income for those that are highly compensated or key employees.

Q: If the adult child can contribute to the Family HSA maximum when they are covered under the parent's HDHP, can the parent also contribute to the family maximum if there are no other dependents?

A: The maximum contribution for the parent for 2017 is $6,750 plus any $1,000 catch up contribution for anyone over the age of 55. If both the parents are over 55, one spouse will need to deposit their $1,000 catch up contribution into their own HSA.

The adult child that is not a tax dependent is eligible to open an HSA in their own name and deposit $6,750 for 2017.

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Q: For employers that offer a HDHP and do not plan to contribute to employees HSA - they MUST file Premium Only Plan? I know it makes sense to so employees can contribute pretax but what if they do not?! Employees contribute after tax and get the deduction when they file?

A: An employer is not required to facilitate the pre-tax HSA contributions for the employee if they do not want to. It is possible for the employer to sponsor a qualified high deductible health plan (HDHP) that is HSA compatible and not make employer contributions to the HSA, and not permit the employees to reduce their salary with pre-tax dollars to fund the HSA.

The advantage to offering the HSA under the cafeteria plan (BESTflex plan or Premium Only plan) is that it may serve as an incentive for employees to fund their HSA because of the payroll deduction convenience and the immediate federal, state and social security tax savings. From an employer perspective, they will gain the reduction in matching payroll taxes for any dollars the employees run through the cafeteria plan.

Q: Can someone be in a HDHP and have a FSA while still having a HSA but not contribute to the HSA?

A: Yes. It is possible for an employee to have a HSA qualified HDHP and opt not to open and fund an HSA. In that case, they could use a general purpose Health Care FSA for their medical expenses. It should be clear, that by doing so the Health Care FSA is considered disqualifying coverage.

This may happen more frequently when you have someone that works past age 65 and is enrolled in Medicare while being enrolled in the employer sponsored HDHP. Because of their Medicare enrollment they are not eligible to open and fund an HSA and can use the Health Care FSA for their medical expenses.

Q: In a divorced family: Mom has custody. Dad is insured parent. Mom claims kids on taxes. Can Dad enroll in HSA for the kids?

A: According to IRS Publication 969-Qualified medical expenses are those incurred by the following persons: 1) You and your spouse; 2) All dependents you claim on your tax return; or 3) Any person you could have claimed as a dependent on your return except that: a) The person filed a joint return; b) The person had gross income of $4,050 or more, or c) You, or your spouse if filing jointly, could be claimed as a dependent on someone else's 2016 return.

"For this purpose, a child of parents that are divorced separated, or living apart for the last 6 months of the calendar year is treated as the dependent of both parents whether or not the custodial parent releases the claim to the child's exemption."

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The dad can open the HSA and fund based upon the family level and use the dollars for their children as it appears, based upon the information above from the IRS publication. This would be consistent with the rule used by the Health Care FSA when there is a divorce whereby both parents can claim the expenses they are responsible for without regard to who actually has the dependency exemption for the year.

Q: Also wondering if H.S.A. funds can be garnished for child support?

A: I would assume not because the dollars are deposited into an individually owned medical trust at a bank that only the accountholder has the right to access.

Q: Some dental and vision expenses can qualify as medical, for instance glaucoma medication. Can these expenses be reimbursed under either the Limited FSA or the HSA or which one do they qualify for?

A: If the prescription drug will be applied to the medical plan deductible, they should use HSA dollars for that expense.

Q: Regarding the HSA w/Post Deductible Health Care FSA - "All medical care expenses incurred after satisfying the minimum HDHP deductible are eligible expenses" so they don't have to satisfy their plan Individual deductible they just have to satisfy the i.e. 2017 minimum HDHP deductible?

A: For 2017, they would just need to satisfy $1,300 single or $2,600 family of the deductible to be eligible to switch their Post Deductible Health Care FSA back to general Health Care FSA expenses. This would be true even if the actual medical plan deductible was larger.

Q: Probably depends how each employer sets it up but can they set it up that they just have to satisfy the 2017 min HDHP deductible if their plans single deductible is higher?

A: Yes this is actually how it works on the FSA side. For purposes of a HRA that is HSA compatible, it would be up to the employer to set the employee responsibility at least at the minimum deductible thresholds, but it could be larger if the employer designs it that way.

Q: Can an employee choose which type of account they would like money contributed to - either an ER sponsored post deductible HRA or a Limited HRA?

A: This would not be common; however, if the employer provides both options, it would be possible to let the employee declare their preference in advance of the plan year.

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Q: HSA eligibility after a 2.5 month grace starts on April 1 - can the employee contribute all $3400 for the year? Keeping in mind that they must stay HSA eligible until April 1 of the following year to not have an issue.

A: The HSA annual contribution limit is based upon the coverage you have on 12/1 of the calendar year. So it would be possible for someone that does not become HSA eligible until 4/1, to deposit the full $3,400 permitted for the 2017 calendar year. The testing period however, is from the end of the calendar year. So to be eligible for the entire $3,400 for 2017, they would need to remain on qualified HDHP coverage through 12/31/18.

Q: There is a preventive drug "list" that is eligible to be pulled out and still be HSA eligible I believe?

A: I agree that preventive care is permitted coverage, however, it is very difficult to determine what drugs are preventive and what are for medical care and this can be a case by case determination. For that reason, to err on the side of conservative, most would view the prescription expenses as part of the HDHP deductible. So I guess it is possible, but would depend upon a facts and circumstances test as well as how the health plan is structured.

Q: Can employee who has a spouse on Medicare make contribution to family limit, or only single limits?

A: The maximum HSA contribution is based upon the HSA accountholder. For that reason, if the HSA accountholder is married to someone who is enrolled in both the employer sponsored HDHP (which means they have family coverage) and Medicare, the HSA accountholder is eligible to contribute the family maximum plus any catch up contributions if they are over the age of 55. The spouse on Medicare however is not eligible to make a catch up contribution.

Q: Regarding having money in your regular FSA still remaining once new plan year begins. I have been told that you are not eligible to participate in the HSA at all, including opening an account. However, I have also been told you actually could open an account, and have your employer make any of their contributions, but you simply could not contribute until your regular FSA is exhausted. At the time, you could then start making contributions. Which is correct?

A: Whether or not the Health Care FSA is disqualifying coverage is dependent on a couple of things. Generally when your FSA balance is exhausted is not the determining factor it is when the coverage period has ended.

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Let's assume for illustration purposes we are talking about a cafeteria plan that runs from 1/1/17-12/31/17.

- If you have a Health Care FSA that does not have grace period or rollover and only has a claims runout period (Administrative time to files claims directly following the end of the plan year. This is often times 3 months and is defined in your plan document.). Any balance you claim during your claims runout period (1/1/18-3/31/18) has NO effect on HSA eligibility for 2018. The employee is HSA eligible on day 1 of the new plan year 1/1/18.
- If you have a Health Care FSA that has the grace period and you have no money left as of midnight on 12/31/17, you will be HSA eligible on 1/1/18.
- If you have a Health Care FSA that has the grace period and you have money left at midnight on 12/31/17, you trigger the grace period. So regardless of when the expenses are incurred or what date you exhaust your Health Care FSA, you will not be HSA eligible under 4/1/18 if the runout period is 3 months.
- If you have a Health Care FSA that has the rollover, and you have money left at midnight on 12/31/17, you potentially trigger the rollover. If during the runout period (1/1/18-3/31/18) you use up any remaining balance from 1/1/17-12/31/17 with expenses from that same 2017 time period, you will not trigger the rollover and will be HSA eligible under 4/1/18 if the runout period is 3 months.
- If you have a Health Care FSA that has the rollover, and you have money left at midnight on 12/31/17, you potentially trigger the rollover. If during the runout period (1/1/18-3/31/18) you use up some of the remaining balance from 1/1/17-12/31/17 with expenses from 2018, and at the end of the runout you still have a remaining balance, you will trigger the rollover and will not be HSA eligible until at least 1/1/19 or longer if they have any rollover at the end of 2019.

Q: Slide 9 about HSA and enrolled in Medicare - If the employee is enrolled in Medicare, but the covered spouse is not, please confirm the spouse can contribute to the member's HSA. If so, please confirm if they can contribute up to the family maximum, or just the single maximum (I would think single, plus any catch-up if 55+).

A: You look at the HSA accountholder to determine HSA eligibility. If the employee is enrolled in Medicare they are not eligible to contribute to the HSA. If the spouse is also covered under the qualified HDHP and not on Medicare, the spouse would need to establish an HSA in order to make any contributions for the family and any eligible catch up contributions.

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Q: Does the >55 age requirement mean you must be 56 or as soon as you turn 55?

A: You are eligible for the catch up contribution on your 55th birthday and can contribute the full $1,000 in the year you turn 55 and you are not required to prorate. However, in the year you turn 65 and enroll in Medicare, you are required to prorate the $1,000 and are only eligible for 1/12 for each month you are HSA eligible in the year you enroll in Medicare.

Q: As to Medicare, if you are not eligible until mid-year for Medicare, can you make contributions for the months you are not eligible? If so, how much can they contribute?

A: In the year you turn 65 and enroll in Medicare, you are required to prorate the $1,000 and are only eligible for 1/12 for each month you are HSA eligible in the year you enroll in Medicare.

Q: Please confirm - if an individual receives Rx assistance from a drug manufacturer and that assistance $$ amount is paid directly to the carrier and is applied to the deductible - is the individual eligible to contribute to an HSA?

A: I would consider that to be a discount program and not first dollar coverage. This would be similar to what was described in IRS Notice 2004-50 Q/A9. See below.

> Q-9. May an individual who is covered by an HDHP and also has a discount card that enables the user to obtain discounts for health care services or products, contribute to an HSA?
>
> A-9. Yes. Discount cards that entitle holders to obtain discounts for health care services or products at managed care market rates will not disqualify an individual from being an eligible individual for HSA purposes if the individual is required to pay the costs of the health care (taking into account the discount) until the deductible of the HDHP is satisfied.

Q: Can an employer with an HDHP with an HSA plan for employees covered under their health plan also offer a full FSA for employees not covered under their health plan?

A: Yes, it is possible to offer a regular Health Care FSA for employees that are not covered under the employer sponsored HDHP and do not plan on contributing to an HSA.

Q: If someone switches from a full FSA to Limited FSA that previously had rollover... The rolled over money would only be available for dental/vision even though previously it was available for medical, correct?

A: If the employee elects the Limited Health Care FSA in the future plan year, any rollover from a general Health Care FSA from the previous plan year, will rollover into the Limited Health Care FSA, which is permitted coverage and the employee will be HSA eligible.

Q: With EBC If I have a Limited Purpose, Dependent Care & General Reimbursement - do I have an option to do the grace period on the Limited and Dep Care and NOT Gen Med?

A: The grace period would be on both the Limited Health Care FSA and the regular Health Care FSA if you elect grace period. You would not be able to have the grace period on only one of the Health Care FSA options. It is possible however, to elect the grace period on the Dependent Care FSA and not the Health Care FSA or vice versa. Also keep in mind that the Dependent Care FSA has no impact on HSA eligibility.

Q: Employee was on wife's plan and had FSA. Wife lost job and now they are on our HDHP. When are they eligible to establish a HSA?

A: Assuming the wife did not elect COBRA on the Health Care FSA when she lost her job, they would be HSA eligible as soon as they become covered under his HDHP.

Q: Can employer contribute to an HSA for an employee that has an individual QHDHP?

A: Yes.

Q: Please expand on Comparability rules when contributions are made pre-tax.

A: If an employer wants to make employer contributions outside of a cafeteria plan arrangement, matching contributions would cause the employer to fail the comparability rules and the employer would be subject to the 35% excise tax. Permissible contribution methods under the comparability rules would include: 1) Same dollar amount or same percentage of the HDHP deductible; 2) Differences based upon tiers of coverage as long as everyone in the tier is treated the same; 3) Excluding collectively bargained employees; and 4) Treating Non-Highly Compensated Employees more generously.

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match what the employee contributes and the employer would be able to limit their contributions (i.e. employer will match dollar for dollar up to $50 per month single and dollar for dollar up to $100 per month for family for example). Keeping in mind however, that the HSA contributions made under this method will be included in the annual nondiscrimination testing and any failure of the testing may result in taxable income for those that are highly compensated or key employees.

Q: Can you please clarify the situation of the employee being ineligible for HSA if spouse has FSA with their plan. Is this only if either spouse is on the other's plan? Could the employee with the HDHP plan have the HSA as long as he isn't covered on his spouses?

A: Generally, there is no single Health Care FSA. So if your spouse is enrolled in a regular Health Care FSA through his/her employer, that plan is generally going to cover expenses for the employee, spouse and children up to the age of 26, whether the dollars are used for family members expenses or not. The mere fact that you could potentially get reimbursed for medical expenses attributed to other family members, would disqualify the HSA tax deduction for any employee or employer contributions.

Q: If your POP allows for HSA pre-tax contributions and the employer makes an HSA contribution each year, what is the employer obligation if an eligible employee does not set up an HSA account?

A: If the employee does not set up the HSA bank account, there is no obligation by the employer to make HSA contributions. It would also be best practice to include that condition in any HSA enrollment materials.

Q: If someone goes on COBRA with an HSA plan how do we give them their employer HSA contribution?

A: The HSA is not subject to COBRA and you are no longer required to make contributions to the HSA.

Q: In an existing group HSA administered by another HSA TPA has been taking pre-tax deductions all year when the group's health plan was not an HDHP, how you advise those ineligible contributions be handled?

A: They should contact a tax accountant. If the employees and/or employer have been contributing to the HSA when they were not eligible, they should discontinue the practice as soon as possible. If the employee was never HSA eligible, the employer may be able to get their contributions back; however the employee would need to work with the HSA custodian to remove their own excess contributions.

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