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Navigating Tax-Favored Accounts And Consumer-Driven Health Care

Agenda

Learn the similarities and distinctions between the many tax-favored accounts available to employer groups and their interaction with a high-deductible health plan (HDHP).

1. Learn the advantages and disadvantages to employees and employers
2. Gain insights into creative ways to use newer accounts
3. Be able to answer questions about tax-favored accounts

- Learn the advantages and disadvantages to employees and employers of:
  - Flexible Spending Account (FSA)
  - Health Reimbursement Arrangement (HRA)
  - Health Savings Account (HSA)
- Gain insights into creative ways to use newer HRA designs:
  - Individual Coverage Health Reimbursement Arrangement (ICHRA)
  - Qualified Small Employer Health Reimbursement Arrangement (QSEHRA)
  - Excepted Benefit Health Reimbursement Arrangement (EBHRA)
- Be able to answer these questions:
  - How can my company leverage the newer tax-favored accounts?
  - How can I use these accounts to recruit and retain employees?
  - What are some creative ways I can use an ICHRA?
  - How do employees coordinate accounts with their spouse?
  - Can these accounts be used to cover abortion services?

Consumer-Driven Health Care Options

Consumer-Driven Health Care Options

Health Reimbursement Arrangement (HRA)

- Employer contributions only; no employee contributions allowed; no pre-tax salary reductions
- Use only for health care expenses including premiums
- Considered a self-insured group health plan
- Not portable

Health Savings Account (HSA)

- Employer or employee contributions or both; usually pre-tax salary reductions
- Use for health care expenses and certain premiums (e.g., COBRA)
- High-deductible health plan (HDHP) coverage required
- Not considered to be group heath plan (individual account)
- Portable

Health Flexible Spending Account (HFSA)

- Employer or employee contributions or both
- Reimburse medical expenses other than premiums
- Group health plan
- Component of cafeteria plan
- “Use-or-lose” (forfeiture) requirement
    - Can have grace period
    - Can have limited carryover

Qualified Small Employer Health Reimbursement Arrangement (QSEHRA)

- Small employers only
- Employer contributions only; no employee contributions allowed; no pre-tax salary reductions
- Use only for health care expenses including individual coverage premiums
- Not portable

Individual Coverage Health Reimbursement Arrangement (ICHRA)

- Began in 2020
- Employer contributions only; no employee contributions allowed; no pre-tax salary reductions
- Use only for health care expenses including individual coverage premiums
- Considered to be group heath plan (individual account)
- Not portable

Excepted Benefit Health Reimbursement Arrangement (EBHRA)

- Began in 2020
- Employer contributions only ; no employee contributions allowed; no pre-tax salary reductions
- Use for limited excepted benefits; premiums for COBRA; health care expenses (except premiums)
- Considered to be group heath plan
- Not portable

HFSAs and HRAs are group health plans (GHPs)

- ERISA applies if plan is sponsored by an ERISA-covered employer
    - Plan documents and participant disclosures (SPD, SMMs)
    - Fiduciary standards
    - COBRA continuation coverage
    - Annual 5500 filing
- HIPAA privacy and security rules apply
    - Policies and procedures regarding use of protected health information (PHI)
    - HIPAA privacy notice
    - HIPAA privacy and security officials
    - Workforce training
    - Review of systems transmitting electronic PHI may be required

Individual Coverage HRA

An Individual Coverage Health Reimbursement Arrangement (ICHRA) is an individual tax-advantaged account used to pay individual premiums and qualified medical expenses of the account holder, spouse or dependents.

ICHRA Restrictions

- Cannot offer ICHRA and traditional group health plan to same group of employees
- New hires in a class can get ICHRA (existing class members have traditional health plan)
- Can offer excepted benefits (vision or dental) or Health FSA, but not EBHRA
- Individual coverage must be substantiated
- Third-party statement showing coverage or individual attestation

ICHRA Restrictions continued

- Offered on same terms to all members of employee class
- Permitted classes:
  - Full-time employees
  - Part-time employees
  - Seasonal employees
  - Non-resident aliens with no U.S. source income
  - Salaried employees
  - Collectively bargained unit employees
  - Non-salaried employees
  - Temporary employees
  - Employees in same geographic rating area

ICHRA Restrictions continued

- Minimum class size if ICHRA offered to one class and group health plan offered to another class
  - 10 employees if employer has fewer than 100 employees
  - 10% of employees if employer has 100 to 200 employees
  - 20 employees if employer has more than 200 employees
- Terms can vary to provide higher dollar amount on basis of age or family size as long as uniform for similarly situated class members
- Must require employees to notify employer if they lose individual coverage
- Must have opt-out feature offered annually before first day of plan year (or during enrollment if eligible mid-year
- Forfeit balance on termination or waive future reimbursements

ICHRA Restrictions continued

- Must give notice of ICHRA 90 days before plan year start; when first eligible for those not eligible when notice otherwise required.
- Must include:
  - ICHRA terms, including maximum dollar amount available
  - Right to opt out and waive reimbursement
  - Contact for more ICHRA information
  - Coverage substantiation requirements
  - Marketplace information regarding premium tax credit and special enrollment period
  - Requirement to have individual coverage and notify employer if coverage is lost

Excepted Benefit HRA

An Excepted Benefit Health Reimbursement Arrangement (EBHRA) is an individual tax-advantaged account used to pay excepted benefit, short-term limited duration insurance (STLDI) and COBRA premiums, and qualified medical expenses of the account holder, spouse or dependents.

EBHRA Restrictions

- Limited to $1,800 currently
- Must also offer traditional group health plan to employees
- Limited to Code Section 213(d) medical expenses; COBRA, STLDI, and excepted benefit premiums
- Must offer uniformly on same terms and conditions as to similarly situated employees

Qualified Small Employer HRA

A Qualified Small Employer Health Reimbursement Arrangement (QSEHRA) is an individual tax-advantaged account used to pay individual coverage premiums and qualified medical expenses of the account holder, spouse or dependents.

QSEHRA Restrictions

- Only available for employers who have fewer than 50 FT or FTE employees
- Must have plan document and SPD and must adhere to HIPAA security and privacy rules
- Limited to individual major medical coverage and qualifying medical expenses
- Cannot offer group health plan

Health Savings Account

A Health Savings Account (HSA) is an individual tax-advantaged account used to pay qualified medical expenses of the account holder, spouse or dependents.

Qualifying for an HSA

To qualify to make or receive contributions to or for an HSA, an individual must:

- be covered under a high-deductible health plan (HDHP) on the first day of the month
- have no other health coverage (with certain exceptions)
- not be enrolled in Medicare
- not able to be claimed as a dependent on someone else's federal tax return

What is a High-Deductible Health Plan (HDHP)?

- A higher annual deductible than typical health plans
- A maximum limit on the sum of the annual deductible and out-of-pocket medical expenses that you must pay for covered expenses
- Out-of-pocket expenses include copayments and other amounts, but do not include premiums

	2022		2023	
HDHP Limits	Self-Only	Family	Self-Only	Family
Minimum Deductible	$1,400	$2,800	$1,500	$3,000
Maximum Out-of-Pocket Expense	$7,050	$14,100	$7,500	$15,000

What is an HDHP? continued

- May provide preventive care benefits without a deductible or with a deductible below the minimum annual deductible
- Preventive care includes, but is not limited to:
  - Periodic health evaluations, including tests and diagnostic procedures ordered in connection with routine examinations, such as annual physicals
  - Routine prenatal and well-child care
  - Child and adult immunizations
  - Tobacco cessation programs
  - Screening for cancer, heart and vascular diseases; mental health conditions; substance use; obstetric and gynecological conditions; pediatric conditions; and vision and hearing disorders

Other Coverage Permissible with an HSA

- Coverage (whether provided through insurance or otherwise) for accidents, disability, dental care, vision care, long-term care
- Insurance that provides benefits only for:
  - Liabilities incurred under workers' compensation laws, tort liabilities, or liabilities related to ownership or use of property
  - A specific disease or illness
  - A fixed amount per day (or other period) of hospitalization
- Disregard any hospital services received under any plan administered by the Department of Veterans Affairs (VA) (such asVA services rendered to disabled veteran)

Health Savings Account Restrictions

- Can reimburse only medical expenses incurred after account established
- Excess contributions are subject to 6% excise tax
  - Can avoid by distributing before individual's tax return deadline
  - Can avoid by asking employees to certify eligibility
- Contributions must by comparable to avoid adverse tax consequences
  - Either the same amount or the same percentage of deductible for employees who are eligible
  - Self-only HDHP coverage tested separately from family HDHP coverage
- Contributions through cafeteria plan not subject to comparability, but cafeteria plan will need to pass nondiscrimination tests
- Can distribute for other than qualified medical expenses
  - 20% excise tax applies unless due to death, disability or attaining age 65

Health Savings Account Documentation

- No formal plan document requirement
- HSA custodians often provide general descriptive information and required forms
- Include HSA eligibility rules in enrollment materials to spare ineligible individuals from potential tax liabilities and penalties
- Explain special rules or options that allow HSA eligibility for Health FSA participants (e.g., zero balance, waive carry over, HSA-compatible Health FSA)
- Ensure HSA is included in cafeteria plan; amend existing cafeteria plan document if needed

HSA Contribution Limits

	2022		2023	
	Self-Only	Family	Self-Only	Family
Minimum Contribution	$3,650	$7,300	$3,850	$7,750
Maximum “Catch-up” Contribution (individuals age 55 or older)	$1,000	$1,000	$1,000	$1,000

Health Flexible Spending Account

A Health Flexible Spending Account (Health FSA) is an arrangement offered by an employer under a Section 125 cafeteria plan that lets employees pay for many out-of-pocket medical expenses with tax-free dollars.

Health FSA Reimburses Certain Qualified Medical Expenses

- Cannot reimburse premiums
- If offered with an employer-sponsored group health plan, exempt from complying with market reforms if deemed excepted benefits
- Health FSAs are deemed excepted benefits:
  - Employee-only contributions
  - Employer contributions up to limits
  - Cannot make available for reimbursement more than either two times employee contributions or employee contributions plus $500

Health Reimbursement Arrangement

A Health Reimbursement Arrangement (HRA) is an arrangement under which an employer contributes money to an account out of which an employee can be reimbursed tax-free for qualified medical expenses up to a maximum dollar amount for a coverage period. Deemed to be self-insured health plan, so subject to nondiscrimination rules.

HRA Limitations

- Owners and partners cannot participate
- Cannot cash out HRA account; generally forfeited upon terminating employment
- Employer can design to allow former employees to use existing balance to pay for medical expenses
- Cannot use funds for any purpose other than reimbursable medical expenses approved by the IRS
- Employer can allow carryovers but not required

Stand-alone HRAs are Generally Invalid under ACA

- The Affordable Care Act (ACA) deems HRAs to be group health plans (GHP)
- GHPs must adhere to market reforms, including prohibiting annual limits on benefits
- HRA, by definition and operation, places annual limit on benefits because reimbursement limited
- Rule carves out retiree-only HRA
    - ACA market reforms do not apply to plans with fewer than two participants who are current employees on first day of plan year

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Integrated HRA Permitted

- Cannot be integrated with individual coverage
- Can be integrated with certain GHP if underlying plan satisfies market reforms
    - Integrated with non-minimum value plan
    - Integrated with minimum value plan
- HRA and integrated plan do not have to be sponsored by same employer
- Employee enrolled in spouse's employer's GHP permits employee to receive HRA plan dollars

Integrated HRA Permitted

When offered with GHP that offers minimum value under ACA

- Employee must be covered under GHP
- HRA must require GHP coverage
- Employee must have at least an annual chance to opt out of reimbursements permanently
- Terminated employee either loses amounts in HRA or has option to elect permanently not to receive them
- Even if GHP does not cover category of essential health benefits, but HRA available to reimburse that category, no violation of annual limit prohibition even if HRA limits reimbursement to maximum benefit

Integrated HRA Permitted

When integrated with non-minimum value GHP

- Offered with GHP that is more than excepted benefits
- Employee actually covered under GHP
- HRA must require GHP coverage
- Employee must have at least an annual opportunity to opt out of reimbursements permanently
- Terminated employee either loses amounts in HRA or has option to elect permanently not to receive them
- HRA may reimburse only co-pay, co-insurance, deductible, and premium for non-essential health benefits

HSA, Health FSA and HRA Interaction

- An employee covered by HDHP and a Health FSA or an HRA that pays or reimburses qualified medical expenses cannot make contributions to an HSA.
- An employee can make or receive contributions to an HSA while covered under an HDHP and:
  - Suspended HRA
  - Retiree-only HRA
  - Health FSA with grace period, if balance is zero at end of prior plan year
  - HSA-compatible Health FSA or HRA (limited purpose, post-deductible)

HSA & HFSA Carryover Rules

- Individual covered under general purpose HFSA due solely to a carryover of unused amounts from the prior plan year cannot contribute to HSA during entire HFSA plan year.
- Individual participating in general purpose Health FSA who elects to participate in an HSA-compatible HFSA for the next year may also elect to have any unused amounts from the general purpose HFSA carried over to the HSA-compatible HFSA.

Employer Offers both HSA-compatible and General HFSAs

A cafeteria plan that offers both a general-purpose HFSA and "HSA-compatible" HFSA may automatically deem any employee who joins an HDHP for the following year as having enrolled in the HSA-compatible HFSA. Thus, any unused amounts from the general-purpose HFSA would carry over to the HSA-compatible HFSA for the following year.

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Post-Dobbs Application

- Employers seeking to cover abortion-related travel expenses could consider EBHRA or HFSA.
  - Must be wary of whether expenses are legal under federal or state law in order to be reimbursed.
- HFSA must generally limit employer contributions to $500, to qualify as excepted, so could be limited effectiveness.
- EBHRA limited to employees also eligible for group health plan; might be too limited.
- EBHRA reimbursement limited to $1,800 so might not afford high enough benefit.
- Can adversely affect HSA eligibility if first-dollar coverage.

Common HSA Questions

Is a married employee eligible for HSA coverage if his or her spouse has non-HDHP coverage?

Yes, if the employee is not covered under the spouse's plan.

Is a married employee eligible for HSA coverage if his or her spouse has general-purpose HFSA coverage through another employer's plan?

No, unless the HFSA does not provide health expense reimbursement for employees' spouses (atypical).

Can an individual make HSA contributions if he or she is participating in the general-purpose FSA because of a carryover of unused amounts from the prior plan year?

Generally, no. The general-purpose FSA carryover will preclude HSA eligibility. However, a cafeteria plan that offers both a general-purpose HFSA and an HSA-compatible HFSA may provide that any employee who enrolls in HDHP will be automatically enrolled in the HSA-compatible HFSA. Thus, any unused amounts from the general-purpose HFSA would carry over to the HSA-compatible HFSA.

If an employer contributes to HSA and is subject to FMLA, is the employer required to continue HSA coverage during FMLA leave like other health plan coverage?

No. An HSA is not a health plan, so the health plan continuation requirements under FMLA do not apply. However, the employer could choose to continue HSA contributions during leave.

Can the health expenses of adult children be paid from their parent's HSAs?

Generally, no. HSA funds may be used for expenses incurred by the employee or the employee's tax dependents. Tax dependent children are those up to age 19 or age 24 if full-time students, or any age if dependent upon the employee for support due to disability. This differs from group health coverage which must be continued for eligible children up to age 26 regardless of tax dependency.

Can an individual receive distributions from his or her HSA if he or she is covered under a non-HDHP?

Yes. Enrollment in a non-HDHP does not prevent an individual from receiving HSA distributions.

If an employer does not contribute to HSA, is it still subject to nondiscrimination testing? Or does that requirement apply only if there are employer contributions?

All HSA contributions made through a cafeteria plan are subject to nondiscrimination testing whether employee-only, employer-only or a combination. Note: Contributions to employee HSAs not made through an employer's cafeteria plan are subject to stricter IRC "comparability rules."

Common HSA Errors

If ineligible for HSA, HSA never existed

- Occasionally administrators overlook other disqualifying coverage and mistakenly contribute to an HSA account for ineligible individual.
- IRS Notice 2008-59, Q & A-23, discusses exception to employer reversion restrictions; clarified in IRS information letter 2017-0003.
  - IRS directed employee to withdraw funds from account and include them in his income but levied no fine.

Mistaken distribution can be returned

- Though permitted, HSA trustee or custodian does not have to accept.

Correcting HFSA Reimbursement Errors

- Employer can follow IRS guidance regarding improper debit card payments to correct mistaken HFSA payments even if overpayments do not relate to a debit card.
- Until employer recovers improper FSA payment, it must deactivate debit card, and require employee to request FSA reimbursements differently (e.g., submitting hard-copy receipt or invoice).
- Employee must repay the improper FSA payment to cafeteria plan.
- If employee fails to make repayment, employer must withhold improper payment amount from employee's pay.
- If employer cannot recover full amount, claims substitution or offset must be used (e.g., employee receives improper payment of $200 but subsequently submits a substantiated claim for $250, employer reimburses only $50)

Correcting HFSA reimbursement errors

- If employer still cannot recover improper payment, it should be treated like any other business debt with amount considered income to employee and subject to withholding for federal income tax, FICA and FUTA purposes, and reported as income on Form W-2 for tax year in which employer forgives debt.
- Employers may apply these correction procedures in any order (consistently for all participants) but cannot treat as business debt until exhausting all other steps.
- Correct during plan year in which improper payment made.
- Repayments available for reimbursing other claims incurred during that plan year (or next plan year, if plan carryover feature).

Health Accounts at a Glance

HSA	A tax-advantaged account used to pay qualified medical expenses of the account holder, spouse or dependents
HRA	An employer-funded arrangement used to reimburse employees for employer-selected qualified medical expenses. HRA must be integrated with group health plan to satisfy ACA market reform restrictions.
Health FSA	An employer-established tax-advantaged account funded by employees to pay for qualified medical expenses with tax-free dollars.
QSEHRA	An employer-funded arrangement used to reimburse employees for employer-selected qualified medical expenses.; limited to small employers with fewer than 50 FT and FTE employees.
EBHRA	An employer-funded arrangement used to reimburse employees for individual unreimbursed qualified medical expenses.
ICHRA	An employer-funded arrangement used to reimburse employees for individual coverage premiums and/or employer-selected qualified medical expenses.

	Who can open?	Who can contribute?
HSA	Employers, employees or any third party provided they are enrolled in HSA-qualified high deductible plan and not enrolled in any other health plan	Employers, employees or any third party
HRA	Employer; however, it may not necessarily require opening a separate account	Employer
Health FSA	Employer	Employee and employer, but employer subject to certain limits.
QSEHRA	Employer	Employer
EBHRA	Employer	Employer
ICHRA	Employer	Employer

	Who owns account?	Yearly contribution limit?
HSA	Employee	In 2023, $3,850 for individual and $7,750 for family. Account holders age 55 and older may contribute an additional $1,000 (individual and family).
HRA	Employer	Not applicable
Health FSA	Unspent funds revert back to the employer at year end unless plan allows carryover or grace period	Determined by employer, but in 2023 cannot exceed $3,050 (projected). Any permitted carryover amount does not count toward this annual limit.
QSEHRA	Employer	In 2022, $5,450 for individual and $11, 050 for family.
EBHRA	Employer	In 2023, $1,950.
ICHRA	Employer	No, can be set by employer.

	Do funds carry over to next year?	Can employee take account with them if they change jobs or retire?
HSA	Yes	Yes
HRA	Employer decides	No, but employers can design HRAs to permit individuals to access funds after employment termination or retirement
Health FSA	Yes, if plan document properly amended, can allow up to $500 to carry over to next year. OR employer may allow a 2.5-month grace period immediately following the plan year. Employer cannot allow both the carryover and the grace period.	No
QSEHRA	Employer decides	No
EBHRA	Employer decides	No
ICHRA	Employer decides	No

	Can the account be used for retirement income?
HSA	Yes. After age 65 individual can withdraw money for any reason with no penalty; it will be taxed as income if the withdrawal is not used for the reimbursement of qualified medical expenses.
HRA	Not typically; but may access unused accumulated funds during retirement to pay for qualified medical expenses, if HRA allows.
Health FSA	No
QSEHRA	No
EBHRA	No
ICHRA	No

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