

# Go All the Way with HSA: Everything HDHP/HSA

2025 Edition



Presented by: **Brian Gilmore** | Lead Benefits Counsel, VP



# Guide Topics

## The Triple-Tax Advantaged Health Savings Account (HSA)

Endlessly complex in its details, but the basics are fairly straightforward

- The HSA pairs with the HDHP to provide a uniquely tax-advantaged way to save
- Employees are increasingly familiar with the concept of the account-based approach offered by an HSA, and increasingly want to better understand how to fully benefit from the HSA
- Most employees want to use the HSA simply as a spending vehicle to use employer contributions to cover the deductible and other cost-sharing amounts under the major medical plan
- However, more and more employees are looking to go all the way with HSA by maximizing contributions, treating the account as a supplemental retirement savings vehicle, and taking advantage of the amazing shoebox rule

## HSA Topics for Discussion

1

**Eligibility:** The requirements to be able to make or receive HSA contributions.

2

**Contributions:** The standard limits and how they apply for spouses, partial years, etc.

3

**Distributions:** The rules for tax-free distributions, including the good and the bad details

4

**Reporting:** Employer, employee, and bank reporting via Forms W-2, 8889, etc.

5

**Everything Else!:** An overview of all the common HSA tricks of the trade to keep in mind



# Why ~~HDPHSA~~ HSA401K?



01

# HSA Eligibility

Access to the Only Triple-Tax Advantaged Account



# Triple-Tax Advantaged Account HSAs Provide Unparalleled Tax Benefits

## Three Tiers of Federal Tax Savings

1

### Pre-Tax Contributions

- Employee contributions through payroll are made on a pre-tax basis through the Section 125 cafeteria plan.
- Employee contributions outside of payroll receive an above-the-line tax deduction.
- Employer contributions are tax-free to the employee.

2

### Tax-Free Growth

HSA gains are not subject to interest, dividend, or capital gains taxes.

3

### Tax-Free Distributions

Distributions for qualifying medical expenses are not subject to taxation

# HSA Eligibility - Can You Make or Receive HSA Contributions?

HSA eligibility has **two key requirements**. You must satisfy **both** to be eligible to make or receive HSA contributions (and cannot be claimed as a tax dependent by someone else).

## Covered by an HDHP

The most fundamental HSA eligibility rule is its link to HDHPs. Only individuals covered by a §223 HDHP can be HSA eligible.

### Specifics:

- Must be covered by an HDHP (and have no disqualifying coverage) as of the first day of the calendar month to be HSA eligible for that calendar month
- Mid-month enrollment would mean not HSA eligible until the following month
- Mid-month loss of HDHP coverage does not affect HSA eligibility for that calendar month

## No Disqualifying Coverage

Generally requires that the employee not have any other health coverage that pays before the minimum HDHP deductible.

### Specifics:

- For example, coverage as dependent on a spouse/DP's or parent's employer's HMO, PPO, or other non-HDHP coverage
- Includes coverage under a general purpose health FSA or HRA (whether through your employer or the employer of a spouse/parent)
- Includes Medicare Parts A, B, C, or D
- Does not include dental or vision coverage or limited purpose (dental/vision/preventive) health FSA or HRA
- Does not include EAP or wellness program coverage as long as they don't provide "significant benefits in the nature of medical care or treatment"



# HSA Contribution Limits

The annual statutory maximum HSA contribution limits are for all contributions combined (employer and employee). These amounts are subject to cost-of-living adjustments each year based on chained CPI (as modified by TCJA).

	2024	2025
Annual Contribution Limit	Individual Coverage: \$4,150 Family Coverage: \$8,300	<b>Individual Coverage: \$4,300</b> <b>Family Coverage: \$8,550</b>
Age 55+ Catch-Up Contribution	\$1,000	\$1,000

(Note: The catch-up contribution limit has been fixed by law at \$1,000 since 2009 and will not further adjust for inflation.)



# The Main HDHP Requirements

The **two key requirements** are that the health plan meets the §223(c)(2) minimum deductible and maximum out-of-pocket expense limitations. These amounts are subject to cost-of-living adjustments each year.

Minimum Annual Deductible	Annual Out-of-Pocket Maximum
<p><b>1. Employee-Only Coverage:</b></p> <ul style="list-style-type: none"><li>• 2024: \$1,600</li><li>• 2025: \$1,650</li></ul> <p><b>2. Family Coverage:</b></p> <ul style="list-style-type: none"><li>• 2024: \$3,200</li><li>• 2025: \$3,300</li></ul>	<p><b>1. Employee-Only Coverage:</b></p> <ul style="list-style-type: none"><li>• 2024: \$8,050</li><li>• 2025: \$8,300</li></ul> <p><b>2. Family Coverage:</b></p> <ul style="list-style-type: none"><li>• 2024: \$16,100</li><li>• 2025: \$16,600</li></ul>
<ul style="list-style-type: none"><li>• Family coverage includes any plan other than employee-only (e.g., employee plus spouse, employee plus child, employee plus family)</li><li>• Preventive services typically not subject to the deductible (see next slide)</li><li>• Embedded deductible* must be at least the minimum annual family deductible</li></ul> <p>*embedded deductible is an individual, lower deductible inside a family deductible</p>	<ul style="list-style-type: none"><li>• The sum of the annual deductible and any other OOP expenses (copays, coinsurance, etc.) cannot exceed these annual limits</li><li>• Out-of-network expenses are not required to apply toward the HDHP out-of-pocket maximum (OOPM)</li></ul>



# HDHP Specifics

## Must be a Major Medical Plan to Qualify as HDHP

- Guidance states that “plan must provide significant benefits to be an HDHP”
- No clear bright-line rule on meeting that standard—generally will require that the plan be considered a traditional major medical
- Only “reasonable benefit restrictions” are permitted
  - Plans only covering hospitalization or in-patient care would not qualify as providing significant benefits

## Preventive Care Not Subject to Minimum Deductible

- HDHPs may (and typically do) provide first-dollar coverage for preventive care
- “Preventive care” includes:
  - Periodic health evaluations, including annual physicals
  - Routine prenatal and well-child care
  - Child and adult immunizations
  - Tobacco cessation programs
  - Obesity weight-loss programs
  - Screening services (long list in [IRS Notice 2004-23](#))
  - All ACA preventive services required to be provided without cost sharing for non-grandfathered health plans
  - [Items and services related to exacerbation of a chronic condition \(IRS Notice 2019-45\)](#)
  - [New: Additional types of contraception, plus clarification of breast cancer screening, glucose monitors, and insulin \(IRS Notice 2024-75\)](#)

# Chronic Condition Preventive Services Permitted

## Reminder—HDHPs Not Required to Provide These Free Preventive Services

- [IRS Notice 2019-45](#) permits HDHPs to offer these new chronic condition-related preventive services as first-dollar coverage (i.e., not subject to the deductible)
- Each plan can take a different approach as to if/when it will adopt these optional preventive services with pre-deductible coverage
- Check your HDHP plan terms for more details

## The Chronic Condition Preventive Services

### Preventive Care for Specialized Conditions

- ACE Inhibitors/Beta Blockers
- Inhaled Corticosteroids/Peak Flow Meter
- Insulin and Other Glucose Lowering Agents/Glucometer/Retinopathy Screening/Hemoglobin A1c Testing/Statins
- LDL Testing/Stains
- Anti-Resorptive Therapy
- INR Testing
- SSRIs
- Blood Pressure Monitor

### For Individuals Diagnosed with

- Congestive Heart Failure and/or Coronary Artery Disease
- Asthma
- Diabetes
- Heart Disease
- Osteoporosis and/or Osteopenia
- Liver Disease and/or Bleeding Disorders
- Depression
- Hypertension

# Expanded Contraception Preventive Services

[IRS Notice 2024-75](#) makes additional types of contraception available as a preventive service that can be covered by the HDHP prior to satisfaction of the deductible without affecting HSA eligibility. It also clarifies the scope of preventive services for breast cancer screening, glucose monitoring, and insulin. Check your HDHP plan terms to confirm whether they are covered pre-deductible.

## Additional Types of Contraception

The guidance adds two types of contraception as preventive services that do not affect HSA eligibility if covered pre-deductible:

1. Over-the-Counter (OTC) Oral Contraceptives
  - Includes progestin-only birth control (the “[minipill](#)”) and emergency contraception levonorgestrel (the “[morning after pill](#)” or “[Plan B One-Step](#)”) regardless of prescription
2. Male Condoms
  - Expanded to include male condoms (previously only female condoms included) regardless of prescription

## Clarification of Existing Preventive Services

The guidance clarifies three types of preventive services that do not affect HSA eligibility if covered pre-deductible:

1. Breast Cancer Screening
  - Not limited to just mammograms, also includes MRIs, ultrasounds, and similar breast cancer screening services
2. Continuous Glucose Monitors
  - Not limited to just glucometers, also includes continuous glucose monitors for individuals diagnosed with diabetes
3. Selected Insulin Products
  - No prescription required, and includes devices used to administer or deliver the selected insulin products

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# HSA Contribution Limits



# Family Coverage Limit Rules

## Family Members Do Not Need to be HSA Eligible

- **Family coverage is defined as “any coverage other than self-only coverage”**
- This means that as long as at least one other individual is covered under the plan, the employee will be eligible for the family contribution limit
- That other individual could be a spouse, domestic partner, child, etc.
- The other covered individual(s) **do not need to be HSA eligible** for the family contribution limit to apply

### Example

- Ben enrolls in HDHP coverage for himself and his spouse for all of 2025 (and has no disqualifying coverage)
- Ben’s spouse Julianna also has coverage under a non-HDHP HMO at her work

### Result

- Ben is eligible to make the full family HSA contribution limit for 2025 (\$8,550)
- The fact that Ben’s spouse Julianna is not HSA eligible is irrelevant for purposes of Ben’s contribution limit
  - Julianna cannot make or receive contributions to her own HSA because she is not HSA eligible (disqualifying coverage)

# Mid-Year Loss of HSA Eligibility

## Contribution Limit Proportional to Number of Months HSA Eligible

- You may contribute a proportional amount of the statutory HSA contribution limit based on the number of months in the year in which you were HSA-eligible
- Remember, HSA-eligible months are any calendar month in which you were covered by a HDHP and had no disqualifying coverage on the first day of the month

### Example

- Bryce enrolls in HDHP coverage January 1, 2025
- Bryce switches from HDHP coverage to non-HDHP coverage as of October 1, 2025 upon getting married (and remains in non-HDHP coverage through December 31, 2025)

### Result

- Bryce was HSA eligible for 9/12 of the year (3/4)
- This means Bryce's 2025 HSA contribution limit is  $\$4,300 \times \frac{3}{4} = \$3,225$ 
  - If Bryce's 2025 HSA contributions (combined employer/employee) exceeded \$3,225, he will need to make a corrective distribution from the HSA of the excess contributions by his tax filing due date (April 15, 2026, unless he files for an extension)
  - This will avoid a 6% excise tax on the excess contributions

# Becoming HSA-Eligible Mid-Year

## General Rule - Contribution Limit Proportional to Number of Months HSA Eligible

You may contribute a proportional amount of the statutory HSA contribution limit based on the number of months in the year in which you were HSA eligible (same as prior slide).

## Special Rule - The Last-Month Rule (aka Full Contribution Rule)

The last-month rule allows HSA contributions up to the full statutory limit even though the employee was not HSA eligible for the full year, provided:

1. The employee is HSA eligible on December 1 of the year at issue, AND
2. The employee remains HSA eligible for **the entire following year** (i.e., the 13-month period from December of year one through December of year two)

## Example

Kris enrolls in HDHP coverage October 1, 2025 and is HSA eligible through the rest of the year and through all of 2026

## Result

- Kris can contribute the full statutory limit for 2025 under the last-month rule because he was HSA eligible in the 13-month testing period from December 2025 through December 2026 (otherwise the 2025 contribution limit would be 3/12 the statutory limit)
- If Kris made the full 2025 statutory contribution and failed to remain HSA eligible for all of 2026, he would be subject to income taxes and a 10% additional tax on the other 9/12 contribution amount



# Individual and Family Coverage

## Contribution Limits Calculated on Monthly Basis

- Eligible to contribute **1/12 of the family limit for months of year in family coverage**
- Eligible to contribute **1/12 of the individual limit for months of year in individual coverage**

**IRS Form 8889 Instructions**  
**“Limitation Chart and Worksheet”**

<https://www.irs.gov/pub/irs-pdf/i8889.pdf>

## Line 3 Limitation Chart and Worksheet

- Before you begin:**
- ✓ See the instructions for line 3, earlier.
  - ✓ Go through this chart for each month of 2023.
  - ✓ Keep for your records.

Month in 2023	Amount from chart above
January . . . . .	\$ _____
February . . . . .	\$ _____
March . . . . .	\$ _____
April . . . . .	\$ _____
May . . . . .	\$ _____
June . . . . .	\$ _____
July . . . . .	\$ _____
August . . . . .	\$ _____
September . . . . .	\$ _____
October . . . . .	\$ _____
November . . . . .	\$ _____
December . . . . .	\$ _____
<b>Total for all months</b> . . . . .	\$ _____
<b>Limitation.</b> Divide the total by 12.	
Enter here and on line 3 . . . . .	\$ _____



# Contribution Deadline

## Contributions for the Year are Due by April 15 of Following Year

- **Individuals and employers may make HSA contributions by the tax deadline filing date the following year (generally April 15)**
- Even though the individual's HSA contribution limit is determined monthly (or via the last-month rule), there is no requirement to contribute monthly

### Example

- Wil enrolls in family HDHP coverage January 1, 2025 and is HSA eligible for the entire year
- Wil's employer contributes \$125 per pay period to his HSA
- Wil contributes \$231.25 per pay period to his HSA through the cafeteria plan
- In February 2026, Wil's employer realizes it missed one employer contribution in 2025 and makes the final \$125 contribution by April 15, 2026
  - Wil's employer notifies the HSA custodian and Wil that the \$125 contribution made in 2026 is a contribution for the prior year (2025)

### Result

- All of Wil's and Wil's employer contributions above (\$8,550) apply to the 2025 contribution limit because all contributions were made by April 15, 2026
- No corrected Form W-2c for 2025 required
  - Employer reports the prior-year (2025) contribution on the current-year (2026) Form W-2 issued following January
  - Not a problem that this may result in Box 12, Code W reporting showing an amount larger than the annual statutory HSA contribution limit (i.e., in excess of \$8,550)
  - Employee will subtract the prior year (2025) HSA contributions on the current-year (2026) individual tax return (generally filed by 4/15/27) on the Form 8889

# Combined Limit for Spouses

## Combined Contributions Cannot Exceed Family HSA Contribution Limit

- Where both the employee and spouse are HSA eligible, and at least one of the spouses has family coverage, the contribution limit is a joint limit
- That means the combined contribution limit for both spouses is \$8,550 (2025) where at least one of the spouses has family coverage
- The spouses can agree to how they would like to divide the combined limit between them

### Example

Buster enrolls in employee + spouse HDHP coverage with his spouse Kristen for all of 2025, and both are HSA eligible for all of 2025

### Result

- **Option 1:** Buster can make or receive the full \$8,550 family HSA contribution limit in his HSA—provided Kristen does not contribute to her HSA in 2025; or
- **Option 2:** Kristen can make the full \$8,550 family HSA contribution limit in her HSA—provided Buster (or employer) does not contribute to his HSA in 2025; or
- **Option 3:** Buster and Kristen can agree to divide the contribution between them.
  - For example, Buster contributes \$5,000 to his HSA, Kristen contributes \$3,550 to her HSA

# Catch-Up Contributions (\$1,000)

## Individuals Age 55+ Are Eligible for \$1,000 Catch-up Contribution

- The 2025 contribution limit for catch-up eligible individuals is \$5,300/\$9,550
- To qualify, the individual must turn age 55 by the end of the taxable year
- The \$1,000 catch-up is not subject to any further inflation adjustments

## Married Individuals

- Both spouses may make the additional \$1,000 catch-up contribution if both are at least age 55
- **Each spouse must make catch-up contributions to his or her own HSA to take advantage of the double catch-up contribution (\$1,000 to each HSA)**

## Example

Anthony and his spouse Chelsea are both age 55, covered by a family HDHP, and HSA eligible for all of 2025

## Result

- Anthony may contribute up to \$9,550 to his HSA (\$8,550 + \$1,000 catch-up)
- Chelsea may contribute her \$1,000 catch-up contribution to **her** HSA **(cannot make her catch-up to Anthony's HSA)**

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# HSA Distributions



# Timing Issues (Good and Bad)

## Good – Shoebox Rule: Tax-Free Distribution Can Be Made in Future Tax Years

- HSA distributions for a medical expense may be made at any time in the future
- **Means the HSA owner could delay taking the tax-free reimbursement until many years later (and enjoy the tax-free growth in the meantime!!)**
- Individual must keep sufficient records to show that the distributions were exclusively to pay or reimburse qualified medical expenses
  - Also must show that the expenses were not paid or reimbursed from another source, and that the individual did not claim the expenses as an itemized deduction in any prior taxable year

## Example

- Marcel incurs the full \$1,500 deductible in medical expenses under his HDHP in 2025 (and also had an HSA in place for all of 2025)
- Marcel also paid \$600 out-of-pocket (i.e., not covered by insurance) in 2025 for new prescription glasses and a dental crown
- **Marcel keeps records of the expenses for the rest of his life**

## Result

To cover the qualifying medical expenses he incurred in 2025, Marcel can take a \$2,100 tax-free distribution from his HSA in **2025...or in 2035...or 2055...etc.**

# Timing Issues (Good and Bad)

## Good – Tax-Free Distribution Not Affected by HSA Eligibility

- An individual does not need to maintain HSA eligibility to take tax-free distributions for medical expenses
- Means the HSA owner could build up an HSA balance, move to a non-HDHP, and still use that HSA account to cover qualifying medical expenses tax-free
- **REMEMBER** - HSA eligibility is relevant only for determining the ability to make or receive HSA contributions—not for purposes of tax-free distributions
  - This is a VERY common misconception, don't fall for it!

## Example

- **Marcel moves to a non-HDHP HMO in 2026 with a \$1,500 balance in his HSA from 2025 contributions**
- Marcel incurs \$1,500 in qualifying medical OOP expenses through copays, coinsurance, contact lenses, sunscreen, glasses, bandages, etc. in 2026 (when no longer HSA-eligible)

## Result

- Marcel can take a \$1,500 tax-free **distribution from his HSA in 2026** to cover the qualifying medical expenses he incurred—even after losing HSA eligibility!
- Loss of eligibility just means he can't make or receive HSA **contributions** in 2026



# Timing Issues (Good and Bad)

## Bad – Expense Must Be Incurred After HSA Established

- A qualified tax-free medical distribution is available only if the medical expense is incurred after the HSA has been “established”
- State trust law determines when an HSA is considered “established”
- **Most state laws require that a trust be funded to be established**
  - Means that an HSA won't be established in most cases until a contribution is **actually deposited** in the HSA

## Example

- Carlos signs up for his company's HDHP at open enrollment for 2025 coverage
- Carlos's employer makes quarterly HSA contributions to any HSA-eligible employee enrolled in the HDHP (Carlos does not make any HSA contributions)
- The company's first quarterly contribution is deposited in Carlos's HSA as of April 1, 2025

## Result

- Carlos's medical expenses incurred prior to April 1 are not eligible for tax-free medical distribution from the HSA
- Only those expenses incurred after the establishment date (4/1/25) are eligible

# Timing Issues (Good and Bad)

## Bad – Expense Must Be Incurred After HSA Established

- There is a significant exception to the establishment rule from the prior slide if the individual had previously established an HSA
- The new HSA is deemed to be established when the first HSA was established **as long as the first HSA had a balance greater than zero at any time during the 18-month period ending on the date the new HSA is established**
  - This allows medical expenses to be reimbursed on tax-free basis from the new HSA even if they were incurred prior to the date the new HSA is funded

### Example

- **Carlos established an HSA January 2021 while in a prior company's HDHP**
- **He distributed the last funds from that first HSA on November 15, 2023**
- Carlos signs up for his new company's HDHP at open enrollment for 2025
- The first contribution is deposited in Carlos's HSA on April 1, 2025

### Result

- Because the new HSA is established within 18 months of November 15, 2023, the new HSA is deemed established in 2021 (not April 2025)
- This allows Carlos's medical expenses incurred January 1, 2025 to March 31, 2025 under the new HDHP to be reimbursed on tax-free basis (before the new HSA is funded)

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# HSA Reporting



# Employer Reporting (Form W-2)

## HSA Contributions Reported on Employee's Form W-2

- **All employer and employee contributions to the employee's HSA are reported in Box 12, Code W**
- Includes the employer contribution amount and the amounts contributed pre-tax by employees through payroll (via the Section 125 cafeteria plan)
- Note that HSA contributions are not included in the separate requirement to report the aggregate cost of employer-sponsored health coverage in Box 12, Code DD (for employers with 250+ W-2s in the prior calendar year)

### Example

- Kyle contributed \$5,300 to his family HSA on a pre-tax basis through his employer's Section 125 cafeteria plan in 2024
- Kyle's employer contributed \$3,000 to his HSA in 2024

### Result

Box 12 of Kyle's Form W-2 from his employer should show \$8,300 in HSA contributions by using Code W

# Employer Reporting (Form W-2)

22222		a Employee's social security number		OMB No. 1545-0008			
b Employer identification number (EIN)			1 Wages, tips, other compensation		2 Federal income tax withheld		
c Employer's name, address, and ZIP code  Chicago Cubs			3 Social security wages		4 Social security tax withheld		
			5 Medicare wages and tips		6 Medicare tax withheld		
			7 Social security tips		8 Allocated tips		
d Control number			9		10 Dependent care benefits		
e Employee's first name and initial		Last name	Suff.	11 Nonqualified plans			
Schwarber		Kyle		12a W   \$8,300			
f Employee's address and ZIP code			13 Statutory employee	Retirement plan	Third-party sick pay		
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
			14 Other		12b	12c	12d
15 State Employer's state ID number		16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax		
					20 Locality name		

Form **W-2** Wage and Tax Statement  
Copy 1—For State, City, or Local Tax Department

2024

Department of the Treasury—Internal Revenue Service



# Custodian (Bank) Reporting

## HSA Contributions Reported on Form 5498-SA

- The HSA custodian reports all contributions to the account for the year on Form 5498-SA
- Also reports the fair market value of the account as of the last day of the year
- Custodian files the Form 5498-SA with the IRS by May 31 of the following year
- Individual receives a copy of the form by May 31 of the following year

2727     VOID     CORRECTED

TRUSTEE'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number  Big Bats Bank		1 Employee's or self-employed person's Archer MSA contributions made in 2024 and 2025 for 2024 \$ \$	OMB No. 1545-1518  <b>2024</b>  Form <b>5498-SA</b>	<b>HSA, Archer MSA, or Medicare Advantage MSA Information</b>
		2 Total contributions made in 2024 \$ \$8,300		
TRUSTEE'S TIN	PARTICIPANT'S TIN	3 Total HSA or Archer MSA contributions made in 2025 for 2024 \$		<b>Copy A For Internal Revenue Service Center  File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2024 General Instructions for Certain Information Returns.</b>
PARTICIPANT'S name Kyle Schwarber		4 Rollover contributions \$	5 Fair market value of HSA, Archer MSA, or MA MSA \$ \$4,653	
Street address (including apt. no.)		6 HSA <input checked="" type="checkbox"/>		
City or town, state or province, country, and ZIP or foreign postal code		Archer MSA <input type="checkbox"/>		
Account number (see instructions)		MA MSA <input type="checkbox"/>		

Form **5498-SA**    Cat. No. 38467V    [www.irs.gov/Form5498SA](http://www.irs.gov/Form5498SA)    Department of the Treasury - Internal Revenue Service

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# Custodian (Bank) Reporting

## HSA Distributions Reported on Form 1099-SA

- The HSA custodian reports all distributions from the account in the year on Form 1099-SA
- Provided to individuals by January 31 of the following year
- Custodian files copy of the form with the IRS by March 31 of the following year
- Bank does not report whether distributions were for qualified medical expenses

9494     VOID     CORRECTED

TRUSTEE'S/PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number  Big Bats Bank		OMB No. 1545-1517 Form <b>1099-SA</b> (Rev. November 2019) For calendar year 20 24		<b>Distributions From an HSA, Archer MSA, or Medicare Advantage MSA</b>  <b>Copy A For Internal Revenue Service Center File with Form 1096.</b>  For Privacy Act and Paperwork Reduction Act Notice, see the <b>current General Instructions for Certain Information Returns.</b>
PAYER'S TIN	RECIPIENT'S TIN	1 Gross distribution \$ 3,000	2 Earnings on excess cont. \$	
RECIPIENT'S name  Kyle Schwarber		3 Distribution code  1	4 FMV on date of death  \$	
Street address (including apt. no.)  City or town, state or province, country, and ZIP or foreign postal code		5 HSA <input checked="" type="checkbox"/> Archer MSA <input type="checkbox"/> MA MSA <input type="checkbox"/>		
Account number (see instructions)				

Form **1099-SA** (Rev. 11-2019)    Cat. No. 38471D    www.irs.gov/Form1099SA    Department of the Treasury - Internal Revenue Service

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# Employee Reporting (Form 8889)

## HSA Contributions and Distributions Reported on Form 8889

- All individuals who had HSA contributions or distributions must report the activity on Form 8889, which is included with the individual tax return (Form 1040)
- Includes information showing HDHP coverage, employer contribution amount (including employee pre-tax payroll contributions), and whether any additional taxes for excess contributions or non-qualified distributions apply
- In some cases, Form 5329 must also be completed to report excess contributions and earnings

## Important Note Regarding Taxation

- Form 8889 is a self-reporting structure where the individual reports any distributions that were made for qualified tax-free medical expenditures
- There is no administrative gatekeeper here—it is up to the individual to properly report that a distribution was subject to income tax and (generally if under age 65) the 20% additional tax for non-medical distributions
- Also used to report the 10% additional tax for individuals who fail to maintain HDHP coverage through the 13-month testing period that applies to the last-month rule

# Employer Reporting (Form 8889)

<p>Form <b>8889</b></p> <p>Department of the Treasury Internal Revenue Service</p> <p>Name(s) shown on Form 1040, 1040-SR, or 1040-NR <u>Kyle Schwarber</u></p>	<p><b>Health Savings Accounts (HSAs)</b></p> <p>Attach to Form 1040, 1040-SR, or 1040-NR. Go to <a href="http://www.irs.gov/Form8889">www.irs.gov/Form8889</a> for instructions and the latest information.</p>	<p>OMB No. 1545-0074</p> <p><b>2023</b></p> <p>Attachment Sequence No. <b>52</b></p> <p>Social security number of HSA beneficiary. If both spouses have HSAs, see instructions.</p>
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**Before you begin:** Complete Form 8853, Archer MSAs and Long-Term Care Insurance Contracts, if required.

**Part I HSA Contributions and Deduction.** See the instructions before completing this part. If you are filing jointly and both you and your spouse each have separate HSAs, complete a separate Part I for each spouse.

1 Check the box to indicate your coverage under a high-deductible health plan (HDHP) during 2023. See instructions . . . . .		<input type="checkbox"/> Self-only <input checked="" type="checkbox"/> Family	
2 HSA contributions you made for 2023 (or those made on your behalf), including those made by the unextended due date of your tax return that were for 2023. <b>Do not</b> include employer contributions, contributions through a cafeteria plan, or rollovers. See instructions . . . . .	<b>2</b>		0
3 If you were under age 55 at the end of 2023 and, on the first day of <b>every</b> month during 2023, you were, or were considered, an eligible individual with the <b>same</b> coverage, enter \$3,850 (\$7,750 for family coverage). <b>All others</b> , see the instructions for the amount to enter . . . . .	<b>3</b>		8,300
4 Enter the amount you and your employer contributed to your Archer MSAs for 2023 from Form 8853, lines 1 and 2. If you or your spouse had family coverage under an HDHP at any time during 2023, also include any amount contributed to your spouse's Archer MSAs . . . . .	<b>4</b>		0
5 Subtract line 4 from line 3. If zero or less, enter -0- . . . . .	<b>5</b>		8,300
6 Enter the amount from line 5. But if you and your spouse each have separate HSAs and had family coverage under an HDHP at any time during 2023, see the instructions for the amount to enter . . . . .	<b>6</b>		8,300
7 If you were age 55 or older at the end of 2023, married, and you or your spouse had family coverage under an HDHP at any time during 2023, enter your additional contribution amount. See instructions . . . . .	<b>7</b>		
8 Add lines 6 and 7 . . . . .	<b>8</b>		8,300
9 Employer contributions made to your HSAs for 2023 . . . . .	<b>9</b>		8,300
10 Qualified HSA funding distributions . . . . .	<b>10</b>		
11 Add lines 9 and 10 . . . . .	<b>11</b>		8,300
12 Subtract line 11 from line 8. If zero or less, enter -0- . . . . .	<b>12</b>		
13 <b>HSA deduction.</b> Enter the <b>smaller</b> of line 2 or line 12 here and on Schedule 1 (Form 1040), Part II, line 13 <b>Caution:</b> If line 2 is more than line 13, you may have to pay an additional tax. See instructions.	<b>13</b>		



# Employer Reporting (Form 8889)

**Part II HSA Distributions.** If you are filing jointly and both you and your spouse each have separate HSAs, complete a separate Part II for each spouse.

<b>14a</b>	Total distributions you received in 2023 from all HSAs (see instructions)	<b>14a</b>	3,000
<b>b</b>	Distributions included on line 14a that you rolled over to another HSA. Also include any excess contributions (and the earnings on those excess contributions) included on line 14a that were withdrawn by the due date of your return. See instructions	<b>14b</b>	0
<b>c</b>	Subtract line 14b from line 14a	<b>14c</b>	3,000
<b>15</b>	Qualified medical expenses paid using HSA distributions (see instructions)	<b>15</b>	
<b>16</b>	<b>Taxable HSA distributions.</b> Subtract line 15 from line 14c. If zero or less, enter -0-. Also, include this amount in the total on Schedule 1 (Form 1040), Part I, line 8f	<b>16</b>	0
<b>17a</b>	If any of the distributions included on line 16 meet any of the <b>Exceptions to the Additional 20% Tax</b> (see instructions), check here <input type="checkbox"/>		
<b>b</b>	<b>Additional 20% tax</b> (see instructions). Enter 20% (0.20) of the distributions included on line 16 that are subject to the additional 20% tax. Also, include this amount in the total on Schedule 2 (Form 1040), Part II, line 17c	<b>17b</b>	0
<b>Part III Income and Additional Tax for Failure To Maintain HDHP Coverage.</b> See the instructions before completing this part. If you are filing jointly and both you and your spouse each have separate HSAs, complete a separate Part III for each spouse.			
<b>18</b>	Last-month rule	<b>18</b>	0
<b>19</b>	Qualified HSA funding distribution	<b>19</b>	0
<b>20</b>	<b>Total income.</b> Add lines 18 and 19. Include this amount on Schedule 1 (Form 1040), Part I, line 8f	<b>20</b>	0
<b>21</b>	<b>Additional tax.</b> Multiply line 20 by 10% (0.10). Include this amount in the total on Schedule 2 (Form 1040), Part II, line 17d	<b>21</b>	0

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 37621P Form **8889** (2023)



05

# Everything Else HDHP/HSA



# HSAs and Reaching Age 65 (Medicare)

## Employees Do Not Lose HSA Eligibility Automatically Upon Reaching Age 65!

- Only Medicare enrollment causes an individual to lose HSA eligibility
- Many employees age 65 and older do not enroll in Medicare
- **Note that anyone who is receiving Social Security retirement benefits is automatically enrolled in Medicare Part A (no opt-out permitted), and therefore automatically loses HSA eligibility**

## No Longer Subject to the 20% Additional Tax

- Individuals who reach age 65 do not pay the 20% additional tax on distributions from the HAS for non-medical expenses
- This is why HSAs are also frequently used as a retirement savings vehicle (IRA-like)
- Remember that only ordinary income taxes apply for any non-medical distribution upon reaching age 65 (like a traditional 401(k)/IRA)

### Example

- Jose turns 65 in August 2025 but does not enroll in Medicare
- He has HDHP coverage (with no disqualifying coverage) in 2025
- In December 2025, Jose decides to purchase a \$2,500 75" 8K Ultra HD TV with HSA funds

### Result

- Jose is HSA eligible for all of 2025 (and therefore can contribute the full statutory maximum plus the \$1k catch-up)
- The \$2,500 HSA distribution for the 8K UHD TV is subject only to ordinary income taxes



# HSAs Post-Age 65 (Medicare)

## Delayed Medicare Enrollment Causes Six-Month Retroactive Enrollment

- No retroactive enrollment issue for individuals who enroll in Medicare at age 65 (or begin Social Security prior to age 65, and therefore have Part A coverage automatically at 65)
- However, delaying enrolling in Medicare until after first becoming eligible (including later application for Social Security benefits) means the later Part A enrollment will be retroactive for up to six months
- **The six-month retroactive enrollment in Part A will block HSA eligibility retroactive to the start of the Medicare coverage**

## How to Address the Retroactive Enrollment

1. Plan Ahead: Stop making or receiving HSA contributions at least six months before applying for Medicare; or
2. Correct Mistake: Make a corrective distribution of the excess contributions by the due date (including extensions) for filing the individual tax return (generally April 15, without extension)

### Example

- Jose turns 65 in August 2024 but does not enroll in Medicare
- **Jose signs up for Social Security benefits in on October 1, 2025, which automatically enrolls him in Medicare Part A retroactive to April 1, 2025**

### Result

- Jose retroactively loses HSA eligibility as of April 2025—and therefore can contribute only 3/12 of the HSA statutory limit for 2025 (plus 3/12 of the catch-up contribution)
- If he already contributed in excess of that limit, he must make a corrective distribution of the excess contributions by April 15, 2026 (assuming no individual return extension)



# HSAs and Medicare

## Where to Direct Employees

### CMS Fact Sheet

### Deciding Whether to Enroll in Medicare Part A and Part B When You Turn 65

<https://www.cms.gov/Outreach-and-Education/Find-Your-Provider-Type/Employers-and-Unions/FS3-Enroll-in-Part-A-and-B.pdf>



#### FACT SHEET: Deciding Whether to Enroll in Medicare Part A and Part B When You Turn 65

##### Do I have a health savings account?

Health savings accounts (HSAs) are a special kind of tax-deferred account available only to people who have a high-deductible health plan. HSAs are not the same as a flexible spending account (FSA) or health reimbursement account (HRA). If you aren't sure if you have an HSA, ask your benefits administrator or plan.

- I have an HSA  
 I do not have an HSA

- I have health insurance based on my (or my spouse's) current employment, from an employer with 20 or more employees (this includes those with Federal Employees Health Benefits (FEHB))

**NOTE:** If you have COBRA or retiree coverage, or if your employer gives you an amount of money to purchase health insurance, you do NOT have health insurance based on "current employment." If you have one of these types of insurance, you should find that situation in the fact sheet.

Your decision to enroll in Part A and Part B **depends on whether you have a high-deductible health plan with a health savings account (HSA):**

- I do NOT have a Health Savings Account (HSA)

**Part A:** If you qualify for premium-free Part A, you should enroll in Part A when you turn 65. However, if you have to pay a premium for Part A, you can delay Part A until you (or your spouse) stop working or lose that employer coverage. You will NOT pay a penalty for delaying Part A, as long as you enroll within 8 months of losing your coverage or stopping work (whichever happens first).

**Part B:** You can delay Part B until you (or your spouse) stop working or lose that employer coverage. This allows you to save the cost of your Part B premium. It also allows you to postpone your one-time "Medigap open enrollment period" until a later time, when you may want to purchase this type of coverage.

You will NOT pay a penalty for delaying Medicare, as long as you enroll within 8 months of losing your coverage or stopping work (whichever happens first). You'll want to plan ahead and enroll in Part B at least a month before you stop working or your employer coverage ends, so you don't have a gap in coverage.

▶▶ You have completed TASK 2. Go to TASK 3 on page 7.

# HSAs and Medicare

## Where to Direct Employees

### CMS Fact Sheet

#### Deciding Whether to Enroll in Medicare Part A and Part B When You Turn 65

<https://www.cms.gov/Outreach-and-Education/Find-Your-Provider-Type/Employers-and-Unions/FS3-Enroll-in-Part-A-and-B.pdf>



#### **I have a High-Deductible Health Plan AND a Health Savings Account (HSA)**

Once you enroll in any part of Medicare, you won't be able to contribute to your HSA. If you would like to continue making contributions to your HSA, you can delay both Part A and Part B until you (or your spouse) stop working or lose that employer coverage. You will NOT pay a penalty for delaying Medicare, as long as you enroll within 8 months of losing your coverage or stopping work (whichever happens first).

You should talk with your employer benefits manager about whether it makes sense to delay Part A and Part B.

**NOTE:** *If you qualify for premium-free Part A, your coverage will go back (retroactively) up to 6 months from when you sign up. So, you should stop making contributions to your HSA 6 months before you enroll in Part A and Part B (or apply for Social Security benefits, if you want to collect retirement benefits before you stop working).*

▶ **You have completed TASK 2. Go to TASK 3 on page 7.**

# HSAs Post Age-65 (Medicare) – Using Accumulated HSA Funds

## Tax-Free Distribution Ability Not Affected by HSA Eligibility

- An individual does not need to maintain HSA eligibility to take tax-free distributions for medical expenses
- Means the HDHP participant could build up an HSA balance, move to Medicare, and still use that HSA account to cover qualifying medical expenses tax-free
- **Remember:** HSA eligibility is relevant only for determining the ability to make or receive HSA contributions—not for purposes of tax-free distributions
  - This is a VERY common misconception, don't fall for it!

### Example

- **Marcel moves to Medicare in January 2026 with a \$1,500 balance in his HSA**
- Marcel incurs \$1,500 in qualifying medical OOP expenses through deductibles, copays, coinsurance, contact lenses, sunscreen, glasses, and bandages in 2026



### Result

- Marcel can take a \$1,500 tax-free **distribution from his HSA** in 2026 to cover the qualifying medical expenses he incurred—even after losing HSA eligibility!
- Loss of eligibility just means he can't make or receive HSA **contributions** in 2026

# End of Covid Testing and Treatment

## General Rule:

### Minimum Annual HDHP Deductible Required

#### 1. Employee-Only Coverage:

- 2024: \$1,600
- 2025: \$1,650

#### 2. Family Coverage:

- 2024: \$3,200
- 2025: \$3,300

- Family coverage includes any plan other than employee-only (e.g., employee plus spouse, employee plus child, employee plus family)
- Preventive services typically not subject to the deductible
- Embedded deductible in family coverage must be at least the minimum annual family deductible

## Relief Ended in 2024:

### General Rule Applies Again

- IRS Notice 2020-15 provided that HDHPs would not fail to maintain HDHP status if they provided medical care services and items purchased related to testing for and treatment of Covid prior to satisfaction of the applicable minimum deductible
- Meant all individuals covered by plans providing first-dollar (i.e., not subject to the deductible) coverage for testing and treatment of Covid could maintain HSA eligibility
- Was designed by the IRS to “eliminate potential administrative and financial barriers to testing for and treatment of COVID-19.”
- IRS [Notice 2023-37](#) provided that this relief was available only through plan years ending on or before December 31, 2024
- **Accordingly, this Covid relief has expired for the 2025 plan year—HDHPs now have to impose the standard deductible again for Covid testing/treatment**

# End of CARES Act HSA Relief

## First-Dollar HDHP Telehealth Expired at End of 2024 for Calendar Plan Years

### Prior Relief: HSA Eligibility Preserved

#### HDHPs could provide first dollar coverage for telehealth or other remote care services

- Meant that individuals covered under a HDHP that waived the deductible for telehealth services or other remote care could maintain HSA eligibility
- Included non-preventive telehealth/remote care

#### **CARES Act/CAA 2022 Relief: Originally applied for plan years beginning on or before December 31, 2021**

- CAA 2022 extension applied from April – December 2022

#### **CAA 2023: Extension of relief made it available through 2024**

- Extension applied to plan years beginning after December 31, 2022 and before January 1, 2025
- Included 2023 and 2024 for calendar plan year HDHPs
- **For plan years beginning on or after January 1, 2025, no relief is available (absent a new act of Congress to again extend relief)**

### Practical Considerations for Prior Relief – Plan Design Issues

#### First-dollar telehealth relief was an optional plan provision

- HDHPs were not required to offer free telehealth care
- The relief simply permitted it without causing loss of HSA eligibility

#### Fully Insured Plan

- Was up to the insurance carrier to make the determination of whether to add first-dollar telehealth/remote care

#### Self-Insured Plan

- Employers could work with TPA and stop-loss provider to make this plan design decision

#### What Could Have Been...

- The original version of the end-of-year funding bill included a two-year extension of the telehealth relief (through 2026)
- That version was subsequently streamlined from 1,500+ pages to 100+ pages, and the HSA relief extension provision was removed
- **We may still see legislation extend the relief this year, stay tuned!**

# HDHPs and Telemedicine: Standard HSA Eligibility Rules *(Applicable 2025 After Expiration of CARES/CAA Relief)*

## Telemedicine That is Part of the HDHP: Not Disqualifying Coverage

- In this case, the employee's costs related to the telemedicine services are subject to the same HDHP cost-sharing rules as non-telemedicine services
- In other words, the **HDHP deductible applies to telemedicine** in the same manner as in-person services
- Preventive care or EAP/Wellness/Disease Management services are not required to be subject to the deductible (same as in-person services)

## Telemedicine That is Not Part of the HDHP: May Be Disqualifying Coverage

- Separate telemedicine plans that are not subject to the HDHP deductible—another exception must apply to avoid blocking HSA eligibility
- Main exemptions that could apply are:
  1. **Preventive Services:** Telemedicine limited to preventive services only
  2. **EAP/Wellness/Disease Management:** Telemedicine that does not provide **"significant benefits in the nature of medical care or treatment"**
  3. **FMV Charge:** Require that employees pay the fair market value for sessions (at least before satisfying minimum deductible)

## "Significant Benefits" Standard Difficult to Apply to Telemedicine

- Best examples come from HIPAA/ACA excepted benefit regulations preamble:
- **For example**, "an EAP that provides only limited, short-term outpatient counseling for substance use disorder services (without covering inpatient, residential, partial residential or intensive outpatient care) without requiring prior authorization or review for medical necessity does not provide significant benefits in the nature of medical care. At the same time, a program that provides disease management services (such as laboratory testing, counseling, and prescription drugs) for individuals with chronic conditions, such as diabetes, does provide significant benefits in the nature of medical care."

# Permanent CARES Act HSA Improvements

## Changes to Eligible HSA/FSA/HRA Expenses

The CARES Act paired a longstanding Republican priority with a longstanding Democrat priority for a bipartisan combo of changes to the list of eligible medical expenses for an HSA/FSA/HRA. **These enhancements never expire!**

### OTC Medicines and Drugs – No Rx Required

**CARES Act eliminated the requirement for a prescription to reimburse an over-the-counter medicine or drug**

- Prior rule from the ACA restricted eligible account-based plan expenses to only OTC medicines and drugs (other than insulin) provided pursuant to a prescription
- No Rx required anymore for OTC medicines and drugs to qualify as eligible HSA/FSA/HRA expense
- **Was effective for expenses incurred on or after January 1, 2020**

### Menstrual Care Products: Now Eligible Expenses

**CARES Act adds menstrual care products to qualifying expenses**

- Previously excluded as an item for general health
  - §213(d) applies only to expenses incurred for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body
- **Now HSA/FSA/HRA can reimburse these products tax-free**
- Includes tampons, pads, liners, cups, sponges, or similar products
- **Was effective for expenses incurred on or after January 1, 2020**

# Other HSA Expense/Eligibility Enhancements

After remaining relatively stable for an extended period since the HSA inception point, HSAs have been experiencing a whirlwind of enhancements in recent years. Although none of the changes by themselves are revolutionary, the modifications are significant in the aggregate by increasing reimbursable expenses and eliminating unnecessary barriers to eligibility. In 2021, Congress and the IRS added two new items to the growing list of improvements.

## Personal Protective Equipment (PPE)

**IRS Announcement 2021-7** notified taxpayers that amounts paid for PPE now qualify as medical care expenses under §213(d)

- Includes PPE such as masks, hand sanitizer, and sanitizing wipes for the primary purpose of preventing the spread of Covid
- Inclusion in definition of §213(d) medical expense makes PPE eligible to be paid or reimbursed under a health FSA, HRA, or HSA
- PPE eligible expense inclusion was made effective for expenses incurred on or after January 1, 2020

## No Surprises Act HSA Eligibility Preservation

**CAA** adds two provisions to ensure the new surprise billing patient protections do not affect HSA eligibility

1. HSA Eligibility Not Affected by Surprise Billing Payments
  - Individuals will not fail to be HSA-eligible merely because they receive surprise billing benefits required by the CAA No Surprises Act provisions
2. HDHP Status Not Affected by Surprise Billing Protection Payments
  - Plans will not lose HDHP status merely because they provide surprise billing benefits required by the CAA's No Surprises Act patient protection provisions
  - Both effective for plan years beginning on or after 1/1/22

# HSAs and Dependent Medical Expenses

## Children – Age 26 Rule Does Not Apply

- Unlike health FSAs and HRAs, the HSA rules do not incorporate the ACA Age 26 rule
- Means that the child must be a tax dependent for the child's expenses to qualify
- Generally requires that the child be under age 19, or under age 24 and a full-time student
  - In most cases, children of divorced parents can be treated as a dependent of both

## Spouse – Same-Sex or Opposite-Sex Spouse

- Since the US Supreme Court's Windsor decision overturning DOMA in 2013, same-sex spouses and opposite-sex spouses are treated identically for federal tax purposes
- Same-sex spouse medical distributions therefore now always qualify

## Domestic Partner – Only Tax-Dependent DPs Qualify

- There is no federal tax recognition of domestic partner status
- Therefore, a domestic partner must qualify as a tax dependent for expenses to be eligible
- This generally requires that the DP:
  1. Have the same principal place of abode and is a member of the employee's household
  2. Receive over half of his or her support from the employee (community property issues)
  3. Not be anyone's qualifying child for tax purposes
  4. Be a U.S. citizen or resident of the U.S. or country contiguous to the U.S.
- Note that certain tax-dependent status requirements are removed from this health tax-dependent definition.

# HSAs and Domestic Partners

## Tax-Free Medical Expenses Distribution Available Only for Tax-Dependent DPs

- Individuals will be subject to income tax and a 20% additional tax for distributions for non-tax dependent domestic partner
- Tax-free HSA distributions available for medical expenses of a tax-dependent DP in the same manner as for a spouse

## Family Coverage Limit Applies for DP HDHP Coverage

- Employees covering a non-tax dependent DP may contribute the family HSA limit—family coverage is defined as “any coverage other than self-only coverage”

## The Domestic Partner Double Family Contribution Loophole

- Normal rule is that employee and spouse have a combined family contribution limit (\$8,550 in 2025) that may be allocated between spouses in any manner (applies where at least one of the spouses has family coverage)
- The combined limit rule doesn't apply to domestic partners because not spouses
- If both the employee and domestic partner are covered by family HDHP coverage and are both HSA eligible, they could each contribute the family HSA limit to their own HSA (\$8,550 to each HSA, \$17,100 total)
  - IRS Informal ABA Guidance (Q/A-3):  
[https://www.americanbar.org/content/dam/aba/events/employee\\_benefits/technicalsessions/2010irs\\_final.pdf](https://www.americanbar.org/content/dam/aba/events/employee_benefits/technicalsessions/2010irs_final.pdf)

# HSAs and VA Health Care Services

## VA General Rule

- Mere eligibility for VA benefits is not disqualifying coverage for purposes of HSA eligibility
- Even though VA benefits are not subject to the minimum HDHP deductible, access to VA services by itself won't block HSA contributions

## VA Three-Month Rule

- Veterans who actually receive medical benefits from the VA have their HSA eligibility blocked for a three-month period
- Veterans who are eligible for VA benefits but have not actually received VA benefits in the past three months are not considered to have disqualifying coverage

## New Rule from 2015 Legislation for Veterans with Service-Connected Disabilities

- Veterans with service-connected disabilities do not have to worry about the general three-month rule for VA services provided for a service-connected disability
- VA coverage will not be considered disqualifying coverage under these circumstances

## Enhanced Rule from ACA Potluck Guidance (IRS Notice 2015-87)

- All VA services provided to a veteran with a service-connected disability will be deemed to be for the service-connected disability—and therefore not disqualifying
- In other words, VA benefits are never disqualifying coverage for veterans with a service-connected disability

# HSAs and Prescription Drug Discounts/Rebates

## General Rule

HSA eligibility requires enrollment in HDHP coverage:

- The HDHP must impose the minimum statutory deductible (2025: \$1,650 employee-only coverage, \$3,300 family coverage)
- Only preventive services can be provided with first-dollar coverage (i.e., not subject to the minimum deductible)

## Prescription Drug Discounts/Rebates

- Oftentimes the plan's prescription drug coverage will make available certain discounts or rebates for anyone enrolled that provide significant cost reductions for prescription drugs, even before application of the deductible

## Discounts/Rebates Generally Do Not Affect HDHP Status (IRS Notice 2004-50, Q/A-9; Q/A-25)

- Discount cards, rebates, or negotiated discounted prices do not disqualify an individual from being HSA-eligible as long as the individual is required to pay the costs of the drugs (taking into account the discount) until the HDHP deductible is satisfied
- Key is that it be a price reduction from discounts, rebates, negotiation, etc. rather than the result of any form of subsidization of the drug cost by the plan/carrier/TPA/PBM/employer

## Discount/Rebate Amount Cannot Apply To Deductible (IRS Information Letter 2021-0014)

- The minimum annual deductible may only be satisfied by actual medical expenses the covered individual incurred
- For example, if a manufacturer discounts a \$1,000 drug to \$600 for the individual, the amount credited to the deductible is \$600 (not \$1,000)

# HSAs and the Section 125 Cafeteria Plan

## All Employee Pre-Tax HSA Contributions are Made Through Section 125

- The Section 125 cafeteria plan can permit employees to make pre-tax premium payments to the HDHP and pre-tax contributions to the HSA
- There is no other mechanism for these elections to be made on a pre-tax basis
- Employers that permit pre-tax HSA contributions are **subject to the Section 125 cafeteria plan nondiscrimination rules** (not the much more difficult HSA comparability rules)

## Special Rule Provides for HSA Election Changes At Least Monthly

- The general rule for Section 125 elections is that they are irrevocable for the plan year unless the employee experiences a permitted election change event
- However, there is an exception to this rule for employee pre-tax HSA contribution elections
- The cafeteria plan **must** permit employees to change their HSA contribution election **at least once per month** for any reason (with no change in status or other event required)

## Employee Pre-Tax HSA Contributions Avoid Employer Payroll Taxes

- As with all employee pre-tax contributions for health benefits, HSA contributions are excluded from both payroll and income taxes (state exceptions apply)
- The big difference is that unlike all other contributions, employees could make the same HSA contribution outside of payroll (with after-tax dollars) and later claim an above-the-line deduction on the personal tax return that results in the same employee tax treatment
- However, the employer avoids the need to pay the employer-share of the FICA taxes (6.2% Social Security, 1.45% Medicare) only if the employee contributes pre-tax through payroll

# Above-the-Line HSA Deductions

## Post-TCJA Form 1040

Post-TCJA, the above-the-line deduction for HSA contributions made outside of a Section 125 cafeteria plan (i.e., not pre-tax through payroll) is handled via Schedule 1:

Form 1040 (2023) U.S. Individual Income Tax Return. The form includes sections for personal information, filing status, digital assets, standard deduction, dependents, income, and adjustments to income. Key areas for HSA deductions are highlighted in pink, including line 13 (Qualified business income deduction) and line 14 (Additions to income from Schedule 1).

Schedule 1 (Form 1040) 2022 Adjustments to Income. This form details various adjustments to income, such as educator expenses, health savings account deduction, moving expenses, and other adjustments. Key areas for HSA deductions are highlighted in pink, including line 13 (Health savings account deduction) and line 26 (Total other adjustments).



# Employer HSA Contributions

## Employer Contributions Count Toward the Statutory Limit

- The statutory limit is a combined limit for all sources of contributions, including employer/employee contributions

## HSA Funding Timing at Employer Discretion

- Employer may make one up-front lump sum contribution, semiannual contributions, quarterly contributions, monthly contributions, per pay period contributions, etc.
- Only real limitation is that the contributions be made to the HSA by the tax filing deadline of the following year (generally April 15)
- **Advantage of up-front funding:**
  - Avoids employees not having sufficient funds in their HSA early in the year to cover the deductible or other out-of-pocket health expenses
- **Disadvantage of up-front funding:**
  - No ability to claw back contributions if an employee terminates or changes plans mid-year
  - Can result in a windfall for the employee—but can also result in excess contributions

## Employer Not Responsible for Determining HSA Eligible Status of Employees

- Employer is responsible only for determining (1) that the employee is covered by an HDHP and has no disqualifying coverage **sponsored by that employer** (cannot verify outside disqualifying coverage), and (2) the employee's age (for catch-up contribution eligibility)
- Employee bears all other responsibility for determining HSA eligibility
  - The employer is not liable if the employee is ultimately incorrect in that determination



# Employee Fails to Timely Establish HSA

## The Common Scenario

- Oftentimes employees fail to establish the account with the employer's designated HSA custodian for some period
- This is usually because the employee has not completed the Customer Identification Program (CIP) to satisfy the USA Patriot Act banking requirements

## Employer HSA Contributions

- It is reasonable to have a consistent administrative policy providing that employees forfeit the employer contribution if they fail to timely open the account
- The IRS has sample language for this purpose at Treas. Reg. §54.4980G-4, Q/A-14(c)
- The sample approach provides that employees will forfeit the employer contribution if they fail to establish the HSA by the end of February of the year following the year in which the employer contributions apply
  - Many employer policies have a shorter timeframe, such as 60-90 days from enrollment in the HDHP
  - In any case, the employer should provide employees with advance notice of the consequences (i.e., forfeiture) of failing to timely establish the HSA

## Employee HSA Contributions

- The employer must either deposit or return the employee's salary reduction contributions to the HSA to comply with state wage withholding laws
- Any reasonable administrative policy is generally fine with respect to the timeframe employers will hold employee contribution amounts pending account establishment before returning the funds back to employees
  - For example, many employers provide that failure to open the account within 90 days (or during the period of employment, if sooner) will result in a refund to the employee the following payroll
  - This avoids the need to hold and potentially refund large amounts of employee contributions for an extended period
  - Any refund must be taxable income subject to withholding and payroll taxes



# Health FSA Interaction with HSA

## General Purpose Health FSA of Employee or Spouse is a Problem!

- General purpose health FSA enrollment of employee or spouse (or parent) is disqualifying coverage for both individuals—blocks eligibility to make or receive HSA contributions
- In other words, if either spouse is enrolled in a general purpose health FSA, neither spouse is HSA eligible (although both could still be covered by an HDHP)
- This is because a general purpose health FSA will pay for medical expenses pre-deductible

## HSA Eligibility Blocked for Health FSA Plan Year Unless Coverage Terminates

- If an employee or spouse is enrolled in an health FSA, both individuals will be HSA ineligible for the entire health FSA plan year
- Exception would be if the participant terminates health FSA coverage mid-year based on permitted election change event or termination of employment (and does not elect COBRA)
- The employee or spouse draining health FSA balance to zero is **irrelevant**
  - Both individuals remain “covered” by the health FSA even when balance is exhausted

## Limited Purpose Health FSA Does not Block HSA Eligibility

- A limited purpose health FSA covers only dental, vision, and/or preventive care expenses and therefore does not cause employee to lose HSA eligibility
- Why enroll in a limited purpose health FSA when the HSA can reimburse dental/vision expenses? Answer: You can save more in your triple-tax advantaged HSA!
  - Use the limited purpose health FSA funds first because they are subject to use-it-or-lose-it



# Health FSA Interaction with HSA

## Examples

### Example 1

- Mike's spouse Jessica is enrolled in a general purpose health FSA through her employer with a July 1, 2024 to June 30, 2025 plan year
- At OE, Mike enrolls in his employer's HDHP for the 2025 calendar plan year
- Jessica spends her full \$3,200 health FSA election by the end of December 31, 2024

#### Result

- Mike is not HSA eligible during his spouse's health FSA period of coverage
- This means that Mike cannot make or receive HSA contributions until July 2025
- Doesn't matter that Jessica spent down her entire health FSA balance in 2024
- Mike can still be covered by the HDHP for January through June of 2025—he just won't be HSA eligible until July 2025 (assuming Jessica does not elect the general purpose health FSA again for the next plan year)

### Example 2

- Mike's spouse Jessica is enrolled in a general purpose health FSA through her employer with a July 1, 2024 to June 30, 2025 plan year
- At OE, Mike enrolls in his employer's HDHP for the 2025 calendar plan year
- **Jessica terminates employment at the end of February 2025**

#### Result

- Jessica's health FSA coverage ends as of February 28, 2025 (assuming no COBRA)
- This means that Mike becomes HSA eligible beginning in March 2025



# Health FSA Carryover and HSA Eligibility

## General Purpose Health FSA Carryover is a Potential Problem!

- Employees who want to move to an HDHP for year two, but have general purpose health FSA amounts remaining in their account from year one subject to the carryover, have an HSA eligibility issue
- If the employee carries over any amount as general purpose health FSA balance into year two, the carryover will block HSA eligibility for all of year two

## Two Main Ways to Avoid the Carryover HSA Eligibility Issue

IRS Notice 2021-15 reiterates the IRS issued guidance in 2014 permitting two approaches to maintain HSA eligibility:

1. **Automatic Conversion of Carryover Balance to Limited Purpose:** Structure the plan to automatically convert the general purpose carryover amount to limited purpose where the employee is moving to an HDHP (preferred approach where available)
2. **Election to Forfeit Carryover Balance:** Allow the employee to waive the general purpose carryover balance and have it forfeit to the plan (fallback approach for plans that do not offer limited purpose option)

### Example

- Manny moves from standard HMO in 2025 to HDHP in 2026
- He has \$100 remaining of general purpose health FSA balance from 2025 that will carry over into the 2026 calendar plan year

### Result

- Manny's employer's plan utilizes the first approach above to automatically convert general purpose carryover to limited purpose where employee moves to HDHP
- The limited purpose health FSA carryover will not block 2026 HSA eligibility!

# Health FSA Grace Period and HSA Eligibility

## General Purpose Health FSA Balance Available in Grace Period is a Potential Problem!

- Employees who want to move to an HDHP for year two, but have general purpose health FSA amounts subject to the 2½-month grace period, have an HSA eligibility issue
- General rule is that the employee will not be HSA eligible until month four in year two (i.e., April for a calendar plan year) because the grace period will be disqualifying coverage for the first three months

## Three Main Ways to Avoid the Grace Period HSA Eligibility Issue

IRS Notice 2021-15 adds the same two approaches as the carryover to maintain HSA eligibility:

1. **Automatic Conversion of Grace Period Balance to Limited Purpose:** Structure the plan to automatically convert the general purpose grace period amount to limited purpose where the employee is moving to an HDHP (preferred approach)
2. **Election to Forfeit Grace Period Balance:** Allow the employee to waive the general purpose grace period balance and have it forfeit to the plan (fallback approach for plans that do not offer limited purpose option)
3. **Spend Down the Account Balance to Zero By End of Plan Year:** The employee spends down the health FSA to zero by the last day of the plan year on a cash basis (meaning the account balance is actually zeroed out through reimbursements)

## Example

- Manny moves from standard HMO in 2025 to HDHP in 2026, with \$100 remaining of general purpose health FSA balance from 2025 that will be available in the 2 ½-month grace period in 2026

## Result

- Manny's employer's plan utilizes the first approach to automatically convert general purpose balances subject to the grace period to limited purpose where employee moves to HDHP—so the grace period will not block HSA eligibility for first three months of 2026



# HSA Contributions Nonforfeitable

## General Rule – HSA Contributions are Nonforfeitable

- The employer cannot recoup from an employee's HSA any portion of the employer's contribution to the employee's HSA
- Means there can't be any vesting schedule or other conditions on amounts contributed to the HSA—if the employee terminates, the HSA contributions remain in the account

## Example

- David's employer funds HSA contributions once per calendar plan year on January 1
- David terminates employment on January 2, 2025 after receiving the full calendar plan year employer HSA contribution of \$3,000 on January 1, 2025

## Result

- David's employer cannot recover any of the nonforfeitable \$3,000 HSA contribution made on January 1 even though David terminated the next day
- Note: David must be careful to avoid excess contributions in this scenario

# Three Major Exceptions to Nonforfeitability Rule for Mistaken Contributions



**Employee was Never  
HSA Eligible**



**Employer Contributions  
Exceed Statutory Limit**



**Clear Documentary Evidence  
Demonstrating Administrative  
or Process Error**

# Mistaken HSA Contributions

## Exception #1: Employee Was Never HSA Eligible

- If an employer contributes to the HSA of an employee who was never HSA eligible, the IRS takes the position that the HSA never existed
- The employer may request that the bank return the contributions to the employer
- If the bank does not return the funds to the employer by the end of the year, the amounts must be included as gross income and wages on the employee's Form W-2 for the year during which the employer made the contributions

## Example 1

- On January 1, 2025, David's employer contributed \$3,000 to his "HSA"
- In **July 2025**, the employer learns that David's account is not an HSA because David was never HSA eligible
- Employer requests that the bank holding the contribution return the \$3,000 (adjusted for earnings, losses, and administration fees directly paid from the account) to the employer

## Result 1

- If the bank agrees to return the excess contributions to the employer, and the employer receives the funds by the end of 2025, there are no tax consequences for David
- If the bank does not return the excess contributions to the employer by the end of 2025, the employer must include the amounts in David's gross income and wages on his 2025 Form W-2

## Example 2

Same scenario except the employer **does not discover the mistake until July 2026**

## Result 2

- The employer must issue a corrected 2025 Form W-2 to David, and David must file an amended 1040 to reflect the income from the excess contributions
- David will also have a 6% excise tax owed for the excess contributions (and will need to take a corrective distribution of the excess to avoid additional excise taxes)



# Mistaken HSA Contributions

## Exception #2: Employer Contributions Exceed Statutory Limit

- If an employer contributes to an employee's HSA in excess of the statutory annual maximum contribution limit, the employer may correct the error
- The employer may request that the bank return the contributions to the employer
- If the bank does not return the funds to the employer by the end of the year, the amounts must be included as gross income and wages on the employee's Form W-2 for the year during which the employer made the contributions

## Example 1

- David is covered by family HDHP coverage in 2025
- In **August 2025**, employer discovers that the employer contributions to his HSA account total \$8,650 (\$8,550 limit)
- Employer requests that the HSA bank return the \$100 excess contributions (adjusted for earnings, losses, and administration fees directly paid from the account) to the employer

## Example 2

Same scenario except the employer **does not discover the mistake until July 2026**

## Result 1

- If the bank agrees to return the excess contributions to the employer, and the employer receives the funds by the end of 2025, there are no tax consequences for David
- If the bank does not return the excess contributions to the employer by the end of 2025, the employer must include the amounts in David's gross income and wages on his 2025 Form W-2

## Result 2

- The employer must issue a corrected 2025 Form W-2 to David, and David must file an amended 1040 to reflect the income from the excess contributions
- David will also have a 6% excise tax owed for the excess contributions (and will need to take a corrective distribution of the excess to avoid additional excise taxes)

# Mistaken HSA Contributions

## Exception #3: Clear Documentary Evidence of Administrative or Process Error

- Exception from [IRS Information Letter 2018-0033](#)
- Where there is **clear documentary evidence demonstrating that there was an administrative or process error**, the employer may request that the bank return the mistaken contributions to the employer
- The employer should maintain documentation to substantiate the mistaken contribution

### Example 1

- David is covered by employee-only HDHP coverage in 2025
- The employer contributes \$1,500 to the HSA for employee-only coverage, \$3,000 for family coverage
- **David's employer mistakenly contributes \$3,000 to the HSA (not \$1,500 for employee-only coverage)**
- Employer requests that the HSA bank return the \$1,500 excess contributions (adjusted for earnings, losses, and administration fees directly paid from the account) to the employer

### Example 2

- The bank may agree to return the mistaken \$1,500 excess contribution to the employer
- Before this new IRS guidance, arguably that amount would have been a nonforfeitable contribution (i.e., a windfall) to David with no ability to recoup

# Mistaken HSA Distributions

## Employees Can Avoid Adverse Tax Consequences In Limited Scenarios

- The general rule is any non-medical distribution from the HSA is includible in gross income and (if under age 65) subject to a 20% additional tax
- Where there is **clear and convincing evidence that the amounts were distributed from an HSA because of a mistake of fact due to reasonable cause**, the IRS permits an exception from those adverse tax consequences
- To avoid taxation, the employee must repay the mistaken distribution to the HSA no later than April 15 of the first year the employee knew or should have known the distribution was a mistake
  - The HSA custodian is not required to allow employees to return a mistaken distribution—this is an optional feature for the HSA custodian to offer
  - The HSA custodian may rely on the employee's representation that the distribution was, in fact, a mistake when processing the repayment

### Example 1

- Din Djarin is enrolled in the Bounty Hunters' Guild HDHP and has an HSA
- He is currently acting as the legal guardian for a child Groggu, who qualifies as his tax dependent
- Din looks up speech therapy, confirms it qualifies as a medical expense, and proceeds to use his HSA to pay \$150 for Groggu's speech therapist bill
- The HDHP later reprocesses Groggu's claim and determines that Din overpaid because the appropriate cost-sharing was \$100, so Din receives a \$50 refund
- There is clear and convincing evidence that the \$50 excess HSA distribution was a mistake of fact due to reasonable cause
- Din has until April 15 of the year following discovery of the overpayment to repay the \$50 excess to his HSA

### Example 2

- Same situation as *Example 1*
- The HSA custodian Mando Bank agrees to accept repayment of Din's mistaken distribution
- Din successfully makes the repayment of the mistaken distribution to the HSA by the following April 15
- Mando Bank will adjust the Form 1099-SA to remove the mistaken distribution
- Din will not be subject to taxation or the 20% additional tax for the \$50 amount returned to the HSA
- Therefore he will not report that amount as a taxable distribution (Lines 14a, 16, 17b) on his Form 8889



# HSAs and Premiums

## General Rule is No Tax-Free Qualified HSA Distributions for Premiums

- Similar to the health FSA rule, the general rule for HSAs is that premiums are not a qualifying medical expense
- This is different from the general HRA rule, which does permit distributions for premiums (although ACA issues abound)

## Exceptions – The Following Premiums Are Qualifying Expenses

1. **COBRA Premiums:** COBRA or any other continuation coverage premiums required by federal law (including USERRA continuation coverage)
2. **Long-Term Care Insurance Premiums:** Annual limitations for eligible LTC premium amounts apply
3. **Any Health Plan Premium While Individual is Receiving Federal or State Unemployment:** Includes health premiums for a spouse or dependent receiving unemployment
4. **Age 65+ Premiums:** Premiums for Medicare (excluding any Medicare supplemental policy) or employer-sponsored retiree coverage

# HSAs and Premiums

## Example

- Xander is involuntarily terminated from employment at age 64 and begins receiving unemployment
- At the time of termination, he was covered under the company's HDHP with an HSA balance of \$5,000

## Result

- Xander can pay for his COBRA premiums with his \$5,000 HSA balance as tax-free qualified distributions
- He could also pay for Exchange coverage premiums (or any other coverage) with tax-free HSA distributions because he is receiving unemployment
- Upon reaching age 65, Xander can use any remaining HSA funds to pay for Medicare premiums tax-free

# HSAs: Not an ERISA Welfare Benefit Plan

## HSAs Generally are Not Subject to ERISA

- HSAs generally are not treated as a group health plan under ERISA or other employee benefits laws
- Means the standard ERISA plan document, SPD, Form 5500, fiduciary duties, etc. do not apply, and HSAs are not subject to HIPAA, COBRA, the ACA market reforms, etc.
- But remember the HDHP is an ERISA group health plan!

## Requirements for Employers to Avoid Application of ERISA to HSAs

- Establishment of the HSA must be completely voluntary on the part of the employees
- Furthermore, the employer must not:
  1. Limit the ability of eligible individuals to move their funds to another HSA;
  2. Impose conditions on the utilization of HSA funds;
  3. Make or influence the investment decisions with respect to funds contributed to an HSA;
  4. Represent that the HSAs are an employee welfare benefit plan (i.e., subject to ERISA); or
  5. Receive any payment or compensation in connection with an HSA.

# HSAs: Not an ERISA Welfare Benefit Plan

## Example

- Eric is covered by his employer's HDHP, and his employer contributes \$1,500/year to his HSA
- He terminates from employment at the end of September 2025

## Result

- Eric must be offered COBRA to continue coverage under the HDHP
- However, the HSA is not a group health plan subject to ERISA, therefore no COBRA requirements apply to the employer HSA contributions (but he could continue to contribute to the HSA on his own)

# Preserving HSA Eligibility: Post-Deductible HRAs

## HRAs Will Generally Block HSA Eligibility

- It's becoming more common for employers to provide some form of reimbursement outside the major medical plan for certain medical expenses typically not covered by the plan
- Examples: Infertility, gender dysphoria, autism, abortion-related medical travel, mental health, other specialized care
- These employee reimbursements create an HRA that is a group health plan subject to ERISA, COBRA, HIPAA, the ACA, Section 105(h) nondiscrimination, etc.
- HRAs that are not specially designed as HSA-compatible are also disqualifying coverage for any individual covered by a HDHP

## Post-Deductible HRAs Are Not Disqualifying Coverage

- **To avoid the HRA blocking employee's HSA eligibility, the HRA needs to be structured as post-deductible**
- This requires that the HRA not permit any reimbursements (i.e., not pay any benefits) until the employee has reached the statutory minimum deductible (2025: \$1,650 individual/\$3,300 family) in expenses covered by the HDHP
- Means that any expenses incurred for the items or services the HRA is designed to cover would not count toward the deductible (because they aren't covered by the HDHP)
- Only expenses for services incurred after satisfying the minimum deductible are eligible for reimbursement
- Expenses incurred before the date the employee satisfies the statutory minimum HDHP deductible are not eligible—even if the employee submits receipts for those expenses after satisfying the deductible

# Preserving HSA Eligibility: Post-Deductible HRAs

Example	Result
<ul style="list-style-type: none"><li>• Mookie's employer offers a specialty HRA for infertility services—he is covered under the family HDHP</li><li>• The HDHP does not cover any infertility expenses</li></ul>	<ul style="list-style-type: none"><li>• If Mookie is eligible for reimbursement under the infertility HRA, he's blocked from being HSA eligible</li><li>• The employer has two ways of avoiding this issue:<ol style="list-style-type: none"><li>1. Exclude employees covered by the HDHP from eligibility under the HRA; or</li><li>2. Make the HRA post-deductible for anyone covered by the HDHP</li></ol></li><li>• #2 requires that Mookie incur at least \$1,650 (employee-only) or \$3,300 (family) in expenses covered by the HDHP before the HRA can pay</li></ul>

# HSA Rollovers and Transfers

## Employees Have Flexibility to Move Their HSA Funds

- **HSA Rollovers and Transfers to Another HSA Custodian are Tax-Free**
  - Rollover and transfer distributions are not subject to income taxes or the 20% additional tax when following IRS requirements
  - They also do not apply to the annual HSA contribution limit
- **Employers Cannot Limit Ability of Employees to Move Funds to Another HSA Custodian**
  - Rules require that employees have complete ownership and control of the HSA as their own personal account
  - DOL guidance prohibits employers from limiting ability of employees to roll over or transfer funds to another HSA
  - Employees generally will need to use the employer's chosen HSA bank to make/receive HSA contributions through payroll
- **HSA Rollovers: 60-Day Rule and Once-Per-Year Rule**
  - Rollover is where the employee receives a distribution from the original account then re-deposits the assets in another HSA
  - *60-Day Rule*: Employee must deposit the rollover assets in the second HSA within 60 days of distribution from original HSA
  - *Once-Per-Year Rule*: Employee can make only one rollover contribution to an HSA during each one-year period
- **HSA Transfers: No Annual Limitations**
  - Transfer is where the original HSA custodian directly moves the HSA funds to the second HSA established by the employee
  - Employee has no access to the assets in the transfer process so is not responsible for completing within a set timeframe
  - No limits on the number of HSA transfers the employee can complete (but practical limitations like fees/hassle may be barrier)

# Transfers from IRAs to HSAs

## Qualified HSA Funding Distributions

- **Once-Per-Lifetime Rule**

- HSA eligible individuals are permitted to make a tax-free transfer from an IRA to an HSA once per lifetime
- The IRA and HSA owners must be the same person

- **Direct Transfers Only**

- Traditional rollovers are not permitted
- Must be a custodian-to-custodian direct transfer of assets

- **Counts Toward Contribution Limits**

- Transfers count as contributions when applying the general HSA contribution limit and catch-up limit for the year in which the transfer occurs
- Cannot use the April 15 rule for transfers—the transfer will always apply to the contribution limit for the actual year in which the transfer occurs

- **Special 12-Month Testing Period**

- Must maintain HSA eligibility for 12 months following the transfer
- This is different from the 13-month testing period for the last-month rule!
- Failure to remain HSA eligible during testing period results in transfer becoming taxable

# 6% Excise Tax on Excess HSA Contributions

## 6% Excise Tax Applies Each Year on Any Excess Contributions

- Individuals must use IRS Form 5329 to report excess contributions and determine excise tax amount
- Must continue to pay the 6% excise tax each year until the excess contributions are distributed

## Corrective Distribution By Tax Filing Deadline Avoids Excise Tax

- The individual can avoid the 6% excise tax by making a corrective distribution by tax filing deadline
- Generally means that the excess must be distributed by April 15 (or later if filing for extension)
- Corrective distribution is included in individual's gross income, but no excise tax imposed
- Special provisions in Form 5329 Instructions allows corrections up to six months after filing deadline

# 6% Excise Tax on Excess HSA Contributions

## Example

- Salvador was covered by a family HDHP (and HSA eligible) for January through September of 2025
- In October 2025, he changed jobs and moved to a non-HDHP HMO
- However, he had already contributed the \$8,550 statutory maximum to his HSA before he left the job

## Result

Salvador's HSA contribution limit in 2025 was \$6,412.50 (9/12 of \$8,550)

### 1. Corrective Distribution Avoiding 6% Excise Tax:

- Salvador makes a corrective distribution from the HSA of the \$2,137.50 in excess contributions (adjusted for earnings) by his 2025 tax filing deadline (generally April 15, 2026)
- He also includes the corrective distribution in his 2025 gross income

### 2. 6% Excise Tax:

- Salvador fails to make a timely corrective distribution of the excess contributions
- He must pay a 6% excise tax on the excess contributions each year until they are distributed

# The HSA Last-Month Rule Tax

## 10% Additional Tax Applies For Failure to Maintain HSA Eligibility in Testing Period

- The last-month rule requires that the individual be HSA eligible in December of the current year through December of the subsequent year (13-month testing period)
- If the individual loses HSA eligibility during that testing period, he or she must include in income the amount that was contributed by using the last-month rule, and that amount is also subject to a 10% additional tax reported on Form 8889
- This is **not** treated the same way as an excess contribution:
  - The additional tax amount is 10% (not 6%)
  - It's a one-time only additional tax (not recurring until distributed)
  - There is no option to make a corrective distribution to avoid the additional tax

# The HSA Last-Month Rule Tax

## 10% Additional Tax Applies For Failure to Maintain HSA Eligibility in Testing Period

### Example

- Salvador was covered by a family HDHP (and HSA eligible) **for only December of 2024**
- **In September 2025**, he changed jobs and moved to a non-HDHP HMO
- Salvador had contributed the \$8,300 statutory maximum to his HSA for 2024 under last-month rule

### Result

- Salvador failed to maintain HSA eligibility for the full testing period (through December 2025)
- This means his 2024 contribution limit was actually \$691.66 (1/12 of \$8,300)
- **Salvador must therefore include \$7,608.34 in his 2024 income (\$8,300 – \$691.66)**
- **He must also pay a 10% additional tax on that amount (\$760.83)**
- There is no option to make a corrective distribution to avoid the income and additional tax
- To add insult to injury, Salvador will need to re-file his 2024 tax return to report this additional income

# HSAs and Estate Planning

## General Rule

- HSAs permit the HSA holder to designate a beneficiary to receive the account's funds upon the HSA holder's death
  - If the HSA holder fails to designate a beneficiary, the HSA will generally pass to the HSA holder's estate by default

## Spouse is the HSA Beneficiary

- **If the HSA holder designates a spouse as the HSA beneficiary, the HSA passes to the spouse without change upon the HSA holder's death**
- **The spouse will take over the HSA without any taxation, and the HSA will preserve the same tax-advantaged status as an HSA for the spouse**

## Any Individual Other than Spouse is the HSA beneficiary

- The HSA will lose its tax-advantaged status upon the HSA holder's death (the account ceases to be an HSA)
- The fair market value of the account becomes taxable to the beneficiary in the year of the HSA holder's death
- The non-spouse beneficiary can reduce the taxable amount by any payments made by the beneficiary for the HSA holder's qualifying medical expenses incurred prior to the HSA holder's death (and paid within one year of the HSA holder's death)

## Estate is the Beneficiary

- The HSA will lose its tax-advantaged status upon the HSA holder's death (the account ceases to be an HSA)
- The fair market value of the account upon death is included in the HSA holder's taxable income for the deceased HSA holder's final tax return



# HSAs and State Income Taxes

## Vast Majority of States Provide Same Tax Treatment as Federal IRC

- Almost all states either conform to the federal income tax treatment for state income tax purposes (or they do not impose a state income tax—which makes this issue irrelevant for those states)
- This means that in almost all states, individuals will receive the same triple-tax advantaged benefits for HSAs for both federal and state income tax purposes

## However, Two States Tax HSAs (at State Income Tax Level Only)

- In these two states, although employee contributions to an HSA will be pre-tax for federal income tax purposes, the contributions will be after-tax for state income tax purposes:
  - **California**
  - **New Jersey**
- Also will not receive the same tax-free growth as provided at the federal level
- Remember: None of this issue applies to the HDHP!

**Note:** Alabama was a third state in the past, but it conformed to the IRC treatment as of 2018

# State Income Taxes

## Example

Example	Result
<ul style="list-style-type: none"><li>• Jackie lives in California and is covered by his employer's HDHP</li><li>• In 2025, he contributes \$5,550, and his employer contributes \$3,000 to his family HSA</li></ul>	<ul style="list-style-type: none"><li>• Jackie's employee/employer HSA contributions are pre-tax for federal income tax purposes</li><li>• <b>However, the HSA contributions are standard taxable compensation for California state income tax purposes, subject to state withholding and payroll taxes</b></li><li>• Jackie will also use the California Schedule CA to report the taxable income from interest and dividends</li></ul>

# Why ~~HDPHSA~~ HSA401K?



# Wave of the Future?

## Bipartisan HSA Improvement Act (H.R. 5688)

- Prevents onsite clinics from blocking HSA eligibility
- Prevents spousal enrollment in a health FSA from blocking HSA eligibility
- Allows transfer of unreimbursed FSA or HRA funds to HSA

## HSA Modernization Act (H.R. 5687)

- Prevents VA, Medicare Part A, and IHS coverage from blocking HSA eligibility
- Allows use of HSA to pay for expense incurred 60 days prior to establishment
- Allows married couple to make both catch-up contributions to same spouse's HSA
- Increases contribution limits to the OOPM maximum

## Reality Check

- We've seen these proposals time and time again each time the GOP controls the House
- Many of these were part of the core proposals of the 2016 Trump campaign/administration's pledge to repeal/replace the ACA
- Very limited Democrat support for any proposals to expand HSAs, and GOP doesn't seem committed to forcing issue
- **These are mostly symbolic political statements of intended GOP policy with very little chance of becoming law—even when GOP controlled all three branches in 2017-2018 they failed to enact these modest reforms**

WRAP-UP

# Takeaways



# Top Three Items You Need to Know About HDHP/HSA

1

**HSAs are uniquely triple-tax advantaged in a manner that makes them the most powerful (tax) force in the universe.** Harnessing this power requires playing by a number of complex rules, particularly with respect to eligibility and contribution limits. IRS Publication 969 provides a useful summary of these rules.

2

**Taking full advantage of HSAs requires an understanding of a number of special rules designed to your benefit.** From the last-month rule, to the ability to take qualifying medical distributions years after the expense was incurred (shoebox rule), to the exception to the 20% additional tax for non-medical distributions once you reach age 65—there are so many fancy ways to go all the way with your HSA!

3

**But don't get too bogged down in the details.** HSAs are overly complex at the deepest levels, and your employees (and maybe you) don't have the patience to learn details beyond the basics. Promoting the basic triple-tax advantaged structure as a vehicle to cover cost-sharing, and addressing issues as they arise, is usually the best and most effective approach.

# Content Disclaimer

## Go All the Way With HSA

The intent of this analysis is to provide the recipient with general information regarding the status of, and/or potential concerns related to, the recipient's current employee benefits issues. This analysis does not necessarily fully address the recipient's specific issue, and it should not be construed as, nor is it intended to provide, legal advice. Furthermore, this message does not establish an attorney-client relationship. Questions regarding specific issues should be addressed to the person(s) who provide legal advice to the recipient regarding employee benefits issues (e.g., the recipient's general counsel or an attorney hired by the recipient who specializes in employee benefits law).

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# Thank you

Brian Gilmore

Lead Benefits Counsel, VP

Brian.Gilmore@newfront.com



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