



**“Mr. HSA”** Roy Ramthun, President of HSA Consulting Services and SVP of HSA Clearing Corp and has taken the time to answer these HSA questions over the past year.

These questions are presented in random order.

**Q.** I made an error and am going to have excess contributions to my HSA over the maximum allowed for 2009. Once money is deposited as a "2009 Contribution" is there any way to "take it out" before the end of the year and make it not an HSA contribution?

**A.** Yes, you can withdraw "excess" contributions and should do so by April 15, 2010 (the last day to make contributions for 2009) so you are not liable for any penalties. Tell your financial institution that you need to withdraw an "excess contribution."

**Q.** Say, in a given tax year, I pay for a medical service "out of pocket" rather than from my HSA and then claim it as an itemized deduction.

Is it prohibited to change your mind and reimburse yourself in a subsequent tax year?

**A.** It is prohibited to "double dip," so if you claimed the expense as an itemized deduction, you would need to amend your tax return first before you would be allowed to pay the tax tax-free from your HSA account. Could be a lot of work but can be done if you need to.

**Q.** An employee of ours is going to be stopping our health insurance to go with her husband's plan at his employer. She wants to know if she can continue to contribute "pretax" to her HSA through our payroll deduction. I thought, a pretax contribution could only be payroll deducted for the employee who holds the insurance. If the spouse wanted to contribute after tax, at 2010 tax time, she could then claim her HSA contribution above-the-line which would virtually turn the contribution to pretax. Am I correct? I'm looking for some verbiage to properly answer the question. Thank you.

**A.** How an individual obtains their HSA-qualified insurance -- whether through their employer, their spouse's employer, or on their own -- does not affect their HSA eligibility. There is a frequent misconception that the insurance must be in the name of the individual to make them eligible to contribute to an HSA. Any HSA-eligible employee must be given the opportunity to contribute to an HSA (or receive employer contributions, if available) by whatever means provided by the employer, including on a pre-tax basis through a Sec. 125 cafeteria plan. Let me know if you need additional information.

Q. If the group cancels their HSA plan, what are some ways the employees can use their money in the HSA account other than qualified medical expenses?

A. HSA funds can be used tax-free only for qualified medical expenses. A fairly extensive list of expenses can be found at IRS Publication 502 (available through [www.irs.gov](http://www.irs.gov)). Funds can also be saved for future medical expenses and any investment earnings grow tax free. HSA funds can also be used for other purposes, but these withdrawals are subject to income tax and a 10% penalty. People age 65 or older do not have to pay the 10% penalty.

Q. Can I make a HSA contribution in the calendar year I turn 65? Would this be prorated or can I make the full contribution?

A. Yes, you can make an HSA contribution in the calendar year you enroll in Medicare. You can make contributions for that year as late as April 15 of the following year. Once you enroll in Medicare, you are no longer eligible to contribute to an HSA, so the amount you contribute in the year you enroll in Medicare must be pro-rated for the months you had HSA-qualified coverage prior to Medicare enrollment. For example, if your Medicare enrollment is effective May 1, you could only contribute 4/12ths of the allowed HSA contribution for the year.

Q. I RETIRED BUT STILL HAVE MONEY IN MY HSA ACCOUNT. AM I STILL CONSIDER AS HAVING AN HSA FOR INCOME TAX PURPOSES?

A. As long as you have unused funds in your HSA, you are considered as having an HSA for income tax purposes. As you probably know, any money still on deposit in your account can be used tax-free on qualified medical expenses at any time in the future. At the end of each year, you will receive a statement from your HSA account custodian (i.e., your bank) that indicates your year-end account balance and how much you withdrew from your HSA account during the tax year. You are responsible for completing Form 8889 with your income tax return. You must indicate on this form how much of your withdrawals were for qualified medical expenses (tax-free) and how much was for non-qualified expenses (taxable).

Q. Can a non profit being designated as the beneficiary of an H.S.A.?

A. Yes, a non-profit entity or trust can be designated as the beneficiary of an HSA. However, only a surviving spouse can receive the funds in an HSA tax-free. For all other beneficiaries, the funds cease being an HSA when the account holder dies. I believe these rules are similar to rules for IRA beneficiaries.

Q. I rolled over an IRA last year to open my HSA in April. I have a few medical expenses that I had to pay out of pocket before I received my cards in the mail. I don't necessarily want to take the money out of the account to reimburse myself but I do want to show these as medical expenses "above the line" since we are self employed. Is there something I need to get from the HSA trustee to document these expenses?

A. Any qualified medical expenses incurred on or after the date your HSA account was opened can be reimbursed tax-free from the HSA account after that date. Your receipts showing the date the expenses were incurred should be adequate proof for the IRS. Is that what you mean? I'm not sure what you mean when you say, "I do want to show these as medical expenses "above the line" since we are self employed."

Q. Can I fund my HSA account with other than the single contribution if I have a Domestic Partner or Civil Union?

A. Individuals cannot make a “family” contribution unless at least one other person is covered by the same HSA-qualified policy. It does not matter (for tax purposes) whether the individual is a spouse, domestic partner, or dependent child, or other qualifying relative. So if you and a domestic partner are covered by the same HSA-qualified policy, you would have “family” coverage and can make the higher contribution of \$5,950 in 2009. However, you cannot split the contribution into separate accounts (one in each of your names) like most married couples could.

Q.

1. Can a person have life insurance while having a HSA?

2. Can a person sign up to be in an hsa after they sign up for the high deductible policy.

3. can a person who desires to leave the hsa and still have the high deductible policy stop making payments and do so?

4. How often can contribution amounts be changed (increase or decreased in contributions)? Thank you!

A.

1. Yes, a person can have life insurance while having a HSA. Life insurance does not disqualify someone from eligibility for an HSA.

2. Yes, a person can open their HSA account after they sign up for the high deductible policy. However, they should open the HSA account as soon as possible because the IRS does not allow qualified medical expenses incurred before the date the account is opened to be reimbursed tax-free from the account.

3. I'm not sure I understand your question. Anyone who has an HSA-qualified high deductible policy is not required to open or deposit funds to an HSA account. Is that what you meant?

4. There is no specific schedule for making deposits/contributions to an HSA account. The annual limit increases every year. Contributions can be made in any amount and with any frequency up through April 15 of the following year as long as the total contributions do not exceed the annual limit for the year (\$3,000 if you are single, and \$5,950 if you have family coverage, for 2009).

Q. I have a HDHP that was effective 11/01/08. I want to open a HSA account now. Can I contribute to the HSA account for 2008? Must my husband have his own HSA account since we are both over 55? We want to catch up on our contributions.

A. Yes each person making a “catch up contribution” needs to open their own HSA.

Q. I have some questions regarding distribution of funds from an H.S.A. What do I do in a situation where I pay for a qualified medical expense out of my H.S.A. but get reimbursed by my insurance company? What do I do with those funds? Can I redeposit them into my H.S.A.? How would I guard against the H.S.A. custodian coding the deposit as a regular contribution? What kind of contribution would it be?

A. Angela, if you paid for a medical expense with HSA funds but the expense is later reimbursed by your insurance company, you should return the funds you withdrew from the HSA and tell the bank it is for a "mistaken distribution" (explain what happened). This should ensure it will not be counted as a contribution.

Q. A local tax preparer is telling self employed persons that they need to set up an HSA to be able to deduct above the line health expenses for 2009. Is this a change that you are aware of? Thanks for your help.

A. Self-employed persons can deduct (as a business expense) the cost of their health insurance premiums before calculating income and payroll taxes. However, out-of-pocket expenses are not deductible (even if you itemize) unless all health care expenses exceed 7.5% of adjusted gross income, and then only the amount above 7.5% counts as a deduction against income.

I believe the local tax preparer is partially correct in telling people that an HSA essentially accomplishes the same objective for expenses below the 7.5% threshold, although the deduction is taken when the money is put into the HSA (and then tax-free when taken out) instead of when it is taken out. This has always been the case since HSAs were enacted in 2003.

Q. Can I open an HSA account in 2009 and contribute money for 2008?

A. Yes, you can open an HSA in 2009 and make a contribution for 2008. However, you need to be aware of a few things:

1. You have until April 15, 2009 to make your contribution for 2008. Make sure to tell the bank that your contribution is for 2008 because they will likely automatically count it towards 2009.
2. You can only make a contribution for 2008 if you had HSA-qualified insurance for at least the month of December, 2008. Make sure you understand the limits that may apply to your contribution.
3. Be aware that any qualified medical expenses you have incurred before you open your HSA account are not reimbursable tax-free from the account. The IRS has a technical rule that only allows expenses incurred on or after the account is established to be reimbursed tax-free from the account.

Q. My wife turned 55 on June 1, 2009. Is she eligible for the \$1,000 catch up contribution for 2008 tax year?

A. Individuals are eligible to make the full catch-up contribution in the year they turn age 55 (i.e., the IRS considers the individual age 55 for the entire year, for tax purposes), provided they had HSA-qualified coverage for the entire year. If the individual is not covered by an HSA-qualified plan for the entire year, the individual would have to pro-rate their standard and catch-up contributions for the number of months they were covered by such a plan during the year.

Q. I have an existing HSA & will have made the full contribution for 2008. My Medicare enrollment will be effective 3/1/09. I know that I am not allowed to make contributions after 3/1/09, but am I allowed to make a full 2009 contribution before 3/1/09?

A. You can only make the full year contribution if you are eligible for an HSA as of December 1 of the year. Since you will only be eligible for the first 2 months of 2009, you will have to pro-rate your contributions for 2009 (standard and catch-up).

Q. My wife is covered under H.S.A. with her employer, but she also carries a "Hospital Indemnity Policy" which is written by American Public Life Insurance Company. For some reason her employer actually pays the premiums on this. The policy is a supplemental-type plan that will pay out a \$3,000 benefit for a hospital stay overnight, plus another \$50/night. We are concerned that if we make a claim on this policy that it will jeopardize our participation in the Health Savings Account.

A. The HSA law specifically allows for coverage under a hospital indemnity policy if it pays a fixed amount per day or other period. It doesn't sound like the policy in question is a problem but I can't say for sure without knowing all the details.

Q. Can contributions be deducted when calculating state (NC) tax liability?

A. Yes, your HSA contributions are deductible on your North Carolina state income taxes as well as federal income taxes.

Q. My husband will have a HSA and HDHP effective 2009. Our 2 kids and I will be on his plan. I work for a very large hospital. I am signing up for my benefits for 2009 and trying to decide what to get. I currently have myself and kids on a low deduct plan through work. Am I still able to do that. It is an Aetna plan. My husband's will be an Aetna plan as well but a HDHP. Can we still have this low deduct plan as long as my husband is not on it? If we can't can I still have an FSA. The hospital has a traditional FSA. If I contributed to it would I only be able to pay for vision, dental and post deductible stuff?

A. Even if your husband and children are covered by an HDHP, you can sign up for whatever coverage you want and cover the kids under your plan as well. Your coverage will not affect your husband's HSA eligibility if he is not covered by your plan. And since he will have family HDHP coverage, he will be able to contribute the higher amount of \$5,950 to an HSA in his name. Since dependent children can't have their own HSAs, it doesn't matter what coverage they have.

The one thing that could create a problem for your husband's HSA eligibility is if you sign up for an FSA at your job. If it is a traditional health care FSA, the IRS will assume that it is available to reimburse out-of-pocket expenses for all family members (including your husband) unless the plan specifically states that it does not cover his expenses. This is rare. It is not good enough to promise to only use it as if it were a "limited purpose" FSA to pay only dental, vision, and preventive care expenses or as a "post-deductible" FSA. The FSA plan documents must state how the funds can be used in writing. An FSA for dependent child care expenses does not cause these problems.

If you don't take the FSA at your job, your husband can still use his HSA funds to pay for your (and your children's) out-of-pocket medical expenses even though you and the children are not eligible for an HSA. That is one of the great advantages of HSAs.

Q. If I have a HDHP and contribute the maximum amount of 2900.00 for 2008 and then in 2009 my employer changes out insurance coverage to something other than a HDHP. What then becomes of my HSA dollars in my account? Can I still use the tax free for medical expenses?

A. All money you have deposited in your HSA remains in your HSA and is under your complete ownership and control. Even if you are no longer covered by an HDHP, you may still use your funds tax-free for qualified medical expenses, including out-of-pocket expenses incurred under a non-HDHP. This is one of the great advantages of HSAs. You just can't add any new funds to your HSA until you are covered under an HDHP again.

Q. Could you please explain to me or send a link showing that OTC expenses that are not subject to the HSA medical plan's deductible can in fact go through the limited purpose FSA, thanks!

A. The only expenses that can be reimbursed from a "limited purpose" FSA are dental, vision, or preventive care expenses. An employer's plan documents should specify which of the three types of expenses it will reimburse, as it doesn't have to reimburse all three. In addition, the employer has the ability to limit reimbursement of expenses within each category (e.g., dental, vision).

What type of OTC expenses did you have in mind? Most health plans do not cover any OTC products, thus they would not generally be subject to the deductible. If you are concerned that OTC products can't be reimbursed from FSAs, see the IRS ruling (Rev. Ruling 2003-102) at <http://www.irs.gov/newsroom/article/0,,id=112623,00.html> But remember, to be reimbursable under a "limited purpose" FSA, these OTC expenses would have to be for dental, vision, or preventive care only.

Q. An employer has a QHDHP and the employee is Medicare eligible. They have a full family covered on their policy. The employer group funds the entire HSA for the family. Are they able to put the funds in an account in the Spouse's name as she is a member of the family and has the same family deductible the member would have?

A. First, just because an employee is eligible for Medicare does not mean they cannot still have an HSA. The employee has to actually be enrolled in Medicare (any part – A, B, or D) to be ineligible. Second, assuming the employee is enrolled in some part of Medicare, just because that enrollment makes the employee ineligible for an HSA does not make their spouse ineligible. In fact, if the spouse is covered by a family HDHP and has no other coverage, they are still eligible and contribute up to the family amount for the year, but the contribution must be made into an account in the spouse's name only. Since the employee is not eligible, the company cannot make a contribution on behalf of the employee. Since the spouse is not an employee, the company cannot make a deductible contribution to the spouse's HSA account without reporting the contributions as gross income to the spouse. However, the spouse can always open their own HSA and make after-tax contributions to the HSA that are fully deductible on their income tax return.

Q. If an employer group has a \$1200 hsa plan now and they are considering going to an \$5000 deductible hsa plan, can the employer also set up an HRA and reimburse for the first \$1000 dollar of claims to ease the pain of going to the \$5000 deductible.

A. They can keep their HRA plan but it cannot pay the first \$1,000 of claims. Only HSA funds can do that. The only options are:

Convert the HRA to a "limited purpose" HRA that only reimburses dental, vision, and/or preventive care expenses change the HRA to a "post-deductible" HRA that only reimburses out-of-pocket expenses after the employee hits a certain \$ amount towards meeting their deductible (this can be as low as \$1,200 for employees with single coverage, and \$2,400 for employees with family coverage starting in 2010). This means the employee would have to use HSA \$ first before they could tap the HRA funds.

a combination of #1 and #2.

Q. An employee has carried company HDHP and established an HSA account. The employee has now switched to the spouse's HDHP and would like to continue the personal HSA contribution. As the employer, do I have to continue the employer contribution to this employee's HSA? How do I make sure this person is still qualified for the HSA savings program?

A. Regardless of whether an employee obtains their HDHP coverage from their own company or their spouse's company, they would be an HSA-eligible employee in either case and should receive HSA contributions like all other employees. You should consider asking whether employees have HSA-qualified insurance coverage from another source (i.e., spousal coverage) if they decline the company HDHP coverage.

You can rely on the employee's self-attestation that they have HSA-qualified HDHP coverage. If it later turns out that the employee was not eligible, you can request that the account be closed and company contributions returned by the bank. In addition, the employee (not the company) is liable for all taxes and penalties.

Q. When an employee is enrolled in an FSA and a HSA, and the medical FSA funds have been depleted (ortho services) can the employee use their HSA funds for eligible expense (ortho services)?

A. First, I hope you are talking about a "limited purpose" FSA that reimburses only dental, vision, and/or preventive care because a regular health FSA would make someone ineligible to contribute to an HSA. Anyway, HSA funds can always be used to pay for out-of-pocket expenses that are not reimbursed or paid by insurance or another type of arrangement (like an FSA or HRA). In other words, no "double dipping."

Q. If a husband has a family HSA account thru his employer, but the wife's employer is mandating that she have coverage by their insurance carrier, is that legal? Can the wife's employer force her to pay for insurance with their carrier, and not let her opt out, knowing that she is covered by an HSA?

A. I've never heard of an employer forcing an employee to take the company's insurance, and I don't think they can do that. Most companies are happy to have another company pay for the family's insurance. I can double check with other experts if you need me to.

Q. If an employer offers both traditional health insurance and an HSA to their employees (at employee's option), are they able to offer two different FSA plans also (limited and full)?

A. Yes, employers can offer a full health FSA to employees that sign up for traditional insurance benefits (e.g., PPO or HMO) and a limited purpose and/or post-deductible health FSA for those employees who sign up for an HSA-qualified high deductible health plan.

Q. What happens if I get admitted to the Hospital before my HSA amount of \$2500 is met?

A. If you are admitted to the hospital before you meet your deductible of \$2,500 is met, you would need to pay the remainder of your deductible (up to \$2,500) towards the cost of your hospital care. After your deductible is met, your insurance will likely pay most (if not all) of the remaining cost of your care. However, the amount you pay can be paid tax-free with your HSA funds. You may contribute up to \$3,000 (single) or \$5,950 (family) towards your HSA for 2009.

Q. The employer takes \$25 a week from paycheck for HSA but is 4 months behind depositing that money. He is also that far behind in the employer promise contribution of \$200 a month. How can he keep pre-tax money in the company account and not deposit it for months on end?? When approached he claims he will "catch up" as soon as he can?

A. I'm very disappointed to hear an employer is doing this. Do you know whether the company "self-insures" its benefits or does it purchase insurance from an insurance company (e.g., Aetna, Cigna, Blue Cross, etc.)? The answer will impact where I go for follow-up on this.

Q. I currently have a high deductible plan and have an HSA. I am leaving this job and am going to a company that offers a high deductible plan and a low deductible plan. Since I have already made HSA contributions this calendar year, can I still sign up for the low deductible plan or must I only sign up for the high deductible plan?

A. If you want to make the maximum contribution allowed to your HSA for this year, you will need to sign up for your new employer's high deductible plan when you change jobs. If you sign up for their low deductible plan, your HSA contributions for 2009 must be pro-rated for the number of months you had coverage under the high deductible plan. You can only count the months for which you had high deductible coverage on the first day of the month.

Here's how it works. You are allowed to contribute up to \$3,000 to your HSA for 2009 if you are single (\$5,950 if you have family coverage) if you are under age 55. If you had HSA-qualified high deductible coverage from January 1 through July 31, you could only count 7 months towards your HSA contribution. So  $7 / 12 \times \$3,000 = \$1,750$ .

If you already deposited more than the allowed pro-rated amount, you will need to withdraw the additional amount. You have until April 15, 2010 to do this.

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A. If you want to make the maximum contribution allowed to your HSA for this year, you will need to sign up for your new employer's high deductible plan when you change jobs. If you sign up for their low deductible plan, your HSA contributions for 2009 must be pro-rated for the number of months you had coverage under the high deductible plan. You can only count the months for which you had high deductible coverage on the first day of the month.

Here's how it works. You are allowed to contribute up to \$3,000 to your HSA for 2009 if you are single (\$5,950 if you have family coverage) if you are under age 55. If you had HSA-qualified high deductible coverage from January 1 through July 31, you could only count 7 months towards your HSA contribution. So  $7 / 12 \times \$3,000 = \$1,750$ .

If you already deposited more than the allowed pro-rated amount, you will need to withdraw the additional amount. You have until April 15, 2010 to do this.

Q. We used your company last year to set up our HSA. We are now renewing our HDHP policy and the firm wants to contribute \$1,200 to each participants HSA account. However, some participants have already contributed the annual max allowed. How do we handle this?

A. The easiest way to fix this would be to ask all the employees who already fully funded their accounts to withdraw the \$1,200 as an "excess contribution." They should wait until after the company deposits the \$1,200 into their accounts. They have until April 15, 2010 to do this but it would be cleaner if they took care of it this year. You should explain to them that they would be liable for excise taxes after April 15, 2010 if they do not withdraw \$1,200 of their personal contributions.

Q. I just have a few questions that I'm hoping you can answer for me...How do I start an HSA? Do I need to use your approved banks and unions?

A. To start an HSA, you need to find a bank or credit union willing to open your account. Although every bank and credit is automatically qualified to open HSAs, not all do. You can find some at [www.hsaed.com](http://www.hsaed.com)

Q. If an employee has an 18 year old in college, lives, at home, works and files their own taxes, and is not on the employee's tax return, can the 18 year old be included on the HSA and the savings account? It says if a child is not on your tax return you cannot include them on the HSA?

A. The question is not one of whether you do claim the child/student as a dependent but whether they CAN be claimed as a dependent under federal tax law.

Here's how the rules work. The student can be claimed as a dependent (and therefore not eligible to have their own HSA) if they are a child (son, daughter, stepchild, etc.) who lives with the parent more than half of the year and is 18 years or younger for the entire calendar year (or under age 24 and a student for the entire year), or is permanently and totally disabled.

The employee does not have to claim their child as a dependent on their tax return to have them be covered by the HSA, if they meet the guidelines above. They may have to consult a tax advisor to determine whether the guidelines apply in their specific situation.

Q. Are my monthly insurance premiums tax deductible in a HSA qualified health insurance plan?

A. The answer depends on your circumstances. If you are getting your HSA-qualified insurance plan through your employer, you are not likely paying any taxes on the premiums. If you are buying the insurance on your own, your premiums are not tax deductible unless:

1. You are self-employed (your premiums are deductible as a business expense); or,
2. All your medical expenses exceed 7.5% of your adjusted gross income (and only the amount above 7.5% is deductible).

If you are asking whether you can use your HSA funds to pay for your premiums tax-free, you can only do that if:

1. Your premiums are for COBRA continuation coverage; or, 2. you are receiving federal or state unemployment compensation.

Q. One of my clients has asked the following and I don't know the answer. Can you help, please. "Hi Arnie, just wanted to get your opinion if this is how most insurance companies would do this..."

We have an employee who had the HSA E+C. July 1 child was dropped. They had fulfilled their \$3000 deductible for 2009 but only \$900 was employee's ....rest was child's. Does she have to fulfill rest of \$1500 starting July 1?

Insurance Company says employee will now need to finish meeting her own \$1500 deductible even though over the year they have met over the \$3000 deductible.

A. Q&A 12 of IRS Notice 2008-59 provides guidance that indicates that insurance carriers have some discretion in this area, subject to state law requirements. The federal rules say plans may use "any reasonable method to allocate the covered expenses incurred during the period of family coverage for the purpose of satisfying the deductible for self-only coverage." While the state may have laws that require the insurance company to do it one way, the federal law does not. If state law is also silent, then it is the carrier's discretion on how they allocate the expenses, as long as the method is reasonable and is applied consistently.

Q. Our company has a fully insured plan with a 125 plan. The plan year is 7-31. Beginning with the new plan year at 8-1 we are considering offering our employees a choice between a fully insured plan and a high deductible plan with a HSA. We know our employees which select the HSA plan can continue to participate with a 125 plan (with limitations on what the 125 plan can be used for).

Our question is what happens in the year of transition. The employees who select the HSA for the plan beginning 8-1 did not know this was going to be a possibility last December when they estimated what to contribute to their 125 plans. They have already committed these funds to the 125 plan for the 2009 calendar year (through 3-15 with the election). With the restrictions to the 125 plan when there is a HSA these employees could possibly not be able to use all their 125 funds. Are there transition rules?

A. By "125 plan," I'm assuming you really mean the Flexible Spending Arrangement (FSA) that is offered through the Sec. 125 plan, because the other benefits that may be available through the Sec. 125 plan do not cause an issue for HSA eligibility. It also sounds like the FSA plan year runs through 12/31 and has a grace period through 3/15/10. This means that any employee that chooses an HSA plan effective 8/1 will not be eligible to make a contribution to their HSA until 4/1/2010 because their FSA makes them ineligible for an HSA, even if they've already spent all the money in their FSA for the year.

Unfortunately, there are no specific transition rules when switching to an HSA plan, and none of your options are particularly attractive. Here are your options:  
Terminate the FSA plan 7/31. Unfortunately, you would have to terminate the plan for all employees, even those not switching to an HSA effective 8/1. As a result, all employees would have to incur sufficient expenses by no later than 7/31 or the unspent balances would revert back to the company.

Terminate the current FSA plan 7/31 and offer a new FSA plan effective 8/1. Unfortunately, you must impose "use or lose" to all current FSAs after 7/31. However, you could offer a new type of FSA plan for the employees that enroll in an HSA effective 8/1 that would not impact their HSA eligibility while offering the full health care FSA plan to employees that don't choose the HSA plan. The "new type" of FSA plan for employees that enroll in the HSA plan could be either: (a) a "limited purpose" plan that can only be used for dental, vision, and/or preventive care expenses; or, (b) a combination limited purpose plus "post deductible" plan that allows employees to pay for out-of-pocket expenses after a dollar threshold is met towards satisfying their HSA plan deductible (the threshold must be at least \$1,150 for employees with single coverage and \$2,300 for employees with family coverage). Like traditional FSAs, all money is use or lose at the end of the plan year.

Convert the regular health FSA to a limited purpose FSA and/or post-deductible FSA effective 8/1. This has the advantage of not terminating and imposing "use or lose," but the change would still have to be for all employees. You cannot terminate only for employees changing to HSAs. Leave the FSA plan in place as it is. If you choose this option, you will need to clearly explain to employees choosing the HSA option that they will not be able to make an HSA contribution until April 1, 2010.

Q. If an Employer set's up a HDHP with and HSA what are the guidelines if the group has an Rx benefit established with Pharmacare, do carriers default an Rx benefit with there HDHP, how should this be handled if the group would like to implement a HDHP with an HSA and also have the Pharmacare Rx benefit? Your advice pertaining to the above questions and any additional information will be greatly appreciated.

A. Before I can provide the best answer to it, I need more information on what a Pharmacare benefit looks like. Is it actually insurance that pays for part of the cost of drugs, or does it just provide employees a discount off the retail cost of prescriptions?

In general, pharmacy benefits, if they are a covered benefit, must be Covered by the same plan as the other medical benefits and one deductible must apply to all the benefits -- medical and

pharmacy. The only other possibility is to have a separate deductible apply to the pharmacy benefits, but that deductible must be at least \$1,150 for employees with single coverage and \$2,300 for employees with family coverage in 2009. If neither is the case, the employees are likely not eligible for an HSA.

**Q. Have an S Corp owned by one person. Can he set up an HSA with a High Deductible plan and contribute for an independent contractor or does the person need to be an employee**

A. Companies (S corps or C corps) can only make HSA contributions for "employees." If the company tries to make contributions for non-employees, it would be taxable compensation to that individual. However, the individual can always make personal contributions to their own HSA and deduct them on their personal income taxes.

**Q. I have an HSA account with \$12,250 value. I will begin working for an employer who provides group insurance. I will no longer need my HSA account. Can I convert that to an IRA or other similar retirement account?**

A. No, you cannot convert your HSA funds to an IRA or similar retirement account tax-free. You could withdraw all your HSA funds but you would have to pay income tax and a 10% penalty on the amount you withdraw. You could then use the funds to deposit into an IRA or another retirement account.

However, leaving your funds in your HSA may be better than putting them in a retirement account, assuming you may have health care expenses in the future. The good news is that even though change insurance to a non-HSA qualified plan, the money you have saved in your HSA account can always be used to pay for qualified out-of-pocket medical expenses tax-free or saved for future uses like during periods of unemployment, out-of-pocket expenses and premiums when enrolled in Medicare, long-term care, or other health care expenses in retirement.

**Q. 1. When the employer withholds employee HSA contributions, how much time do they have to deposit the funds to the employee's HSA account?  
2. Does the employer have to deposit the w/h HSA in the same year? (ex. late December withholding - does it have to be deposited before the new year?)**

A. With regard to the first question, there is no specific timeframe within which an employer must deposit withheld funds to the employee's HSA account. I believe there are standards that say it must be "within a reasonable time" but nothing more specific than that.

With regard to your second question, the employer's deposits do not have to be within the same calendar year, but they need to tell the bank whether deposits (e.g., in January) are for the current year or prior year, or the bank will assume they are for the current year.

**Q. I have not yet opened my HSA account but I have outstanding bills to some doctors, once I open my account can I use those funds to pay those bills? I thought I could but a QA on here made it sound like perhaps I couldn't.**

A. Unfortunately, the IRS has a technical rule that does not allow you to reimburse expenses incurred prior to the date your HSA account is opened. You can only pay for expenses incurred on or after that date tax-free from your HSA. Sorry.

**Q. I am a small business owner and have had an HSA for several years. I know that the max contribution for a single plan in '09 is \$3,000, plus a \$1,000 "catch-up" contribution as I am 55+.**

**My question is this: I will turn 65 on Oct 29th this year and will become eligible for Medicare. Will I be allowed to make the full \$4,000 contribution to my HSA for '09?**

A. The answer depends on when your enrollment in Medicare is effective. Are you already taking Social Security? If so, your Medicare enrollment will likely be effective on October 1. Assuming this happens, you would have to pro-rate both your standard and catch-up contributions for the 9 months you are eligible for an HSA before you enroll in Medicare. So,  $9/12 \times \$4,000 = \$3,000$ .

However, you can also delay your enrollment in Medicare as long as you are not enrolled (or delay enrolling) in Social Security. You can delay taking Social Security as late as age 70-1/2. As long as you are not enrolled in Medicare, you would be able to contribute the full amount (including catch-up contributions) for months in which you are eligible for an HSA.

**Q. Rx Card:**

How does a prescription card work with an HDHP? I want the funds to go towards my deductible but I've been told by three pharmacies that if I used my Rx card, it wouldn't go thru my insurance provider and wouldn't count towards my deductible. Is that true?

A. The answer depends on exactly what type of prescription card you have. Some Rx cards do not provide insurance coverage but simply give you a discount off the retail price of drugs. In this case, since prescriptions are not part of your insurance coverage, any Rx expenses would not count towards your deductible.

However, if your Rx card is part of your insurance plan, then I would expect the Rx expenses to count towards your deductible, unless your plan is not truly an HDHP.

**Q. My husband's employer (small employer less than 50 employees) just enrolled everyone in an HSA. They are telling their employees that the funds they put on their benefits card does not rollover! They are saying that if you don't use the money, it goes back to the employer. I work for a larger firm and know that to be untrue. Could this be true for a smaller business? Please HELP!! Thank you.**

A. If your husband's firm is truly enrolled in an HSA, the funds do NOT expire at the end of the year but rollover automatically to next year. That is one of the great advantages of HSAs. There are no different rules for small businesses.

Hope that helps. I'm happy to talk to someone to help set them all straight if needed.

**Q. My wife is receiving unemployment benefits. Can she pay the premiums from her HSA account on our family insurance plan? I am the primary on the insurance plan.**

A. If your wife is actually receiving (not just eligible for) state or federal unemployment benefits, she can use her HSA account funds to pay for the premiums for your family insurance plan. That is one of the great advantages of an HSA. If the insurance plan is an HSA-qualified plan, she would remain eligible to continue to make HSA contributions as well. If not, she cannot add any more money to the account but can always use the existing funds in the account.

**Q. Does Long Term Care premiums qualify as an expense eligible?**

A. Long-term care insurance premiums may be paid tax-free with HSA funds. However, the amount you can pay tax-free is limited annually by the IRS. The limits are published in IRS Publication #502 (available at [www.irs.gov](http://www.irs.gov)) and vary by age. The most current version is only available for 2008, so we won't know the limits for 2009 until later this year.

Q. My wife and I are covered by insurance at my employment. We fall under the guidelines to be eligible for a HSA account or at least I do. My wife is on Medicare because of disability does this affect our status? I suppose I could contribute but not her or am I also exempt?

A. As long as you have HSA-qualified insurance, you are eligible to contribute to an HSA. Your wife is not eligible because she is covered by Medicare.

If your HSA-qualified plan covers only yourself (not your wife), you can contribute up to \$3,000 for 2009 (\$4,000 if you are 55 or older this year).

If your plan covers both you and your wife (i.e., family coverage), you can contribute up to \$5,950 for 2009. The fact that your wife is on Medicare does not impact your ability to contribute the higher amount if she is also covered by your company's insurance policy.

Q. Can an employee open multiple HSA accounts? We have an employee that wants to open an HSA with us (we are a credit union) and then wants to open an HSA elsewhere that will get a better rate of return. Is this possible?

A. Yes, an employee may open multiple HSA accounts. There is no limit on the number of HSA accounts an individual may have. However, the total contributions to all the accounts cannot exceed the maximum contribution for a given year (e.g., \$3,000 for a person with single HDHP coverage in 2009).

Q. If I have an HSA with family coverage and my spouse turns 65 in July and goes on Medicare, what is my allowable contribution for the year?

A. If I have an HSA with family coverage and your spouse turns 65 in July and goes on Medicare, you can still make the full family contribution for the year into an HSA in your name. Just because your spouse is no longer eligible after Medicare enrollment does not impact your eligibility, including the fact that you still have family coverage. Alternatively, your spouse could also make a partial-year contribution based on their eligibility before enrolling in Medicare to an HSA in their name plus a partial-year catch-up contribution, and you could deposit the difference (up to the family contribution limit) into your account.

Q. I am over HR at a small company consider offering HSAs to my employees. I was wondering if I had employees eligible to open an HSA on 1/1, but decided not to if I could still contribute \$100/month. So on 4/1 they are still eligible and decide to open an HSA I can legally deposit \$400 into their account?

A. It sounds like your employees were likely eligible for HSA contributions back to January 1, so you can legally make at least \$600 (\$100/month) contributions per employee. In fact, you could put the whole \$1,200 in for the year now, if you want. The timing of the contributions is not so much of an issue. The contributions just need to be made by April 15 of the following year.

What is important for your employees to remember, however, is that any expenses they have incurred before the date their HSA account is opened (and at least a minimal deposit is made) cannot be reimbursed tax-free from the account. Only expenses incurred after that date, due to a technical IRS rule.

Q. If an employee put in an excess amount into their HSA how can they go about withdrawing the money? Do they still have to pay income taxes on the money? Is this excess subject to a penalty? If they put in an excess for 2008 is it too late to do anything.

A. If an employee put in an excess amount into their HSA for 2008, the last day they could withdraw the excess amount without paying any penalties was April 15, 2009. They must still withdraw the excess amount as soon as possible and are liable for a six percent (6%) excise tax on the excess amount.

They should contact their financial institution and request to withdraw an "excess contribution." I'm not completely sure what the process is for paying the excise tax. Hopefully the financial institution will know. If not, I can find out.

**Q. Is myofascial therapy a qualified HSA expense?**

A. I'm not sure what myofascial therapy is but if it is medical treatment prescribed by your doctor, it probably is a qualified expense.

As I have to tell most people when they ask me about whether or not a specific treatment is a qualified medical expense, there have been thousands of cases involving the many nuances of what constitutes "medical care" under the Internal Revenue Code, which governs Health Savings Accounts. A determination of whether an expense is qualified as "medical care" is based on all the relevant facts and circumstances. To be an expense for medical care, the expense has to be primarily for the diagnosis, cure mitigation, treatment, or prevention or alleviation of a physical or mental defect or illness. The determination often hangs on the word "primarily." Consult your physician and tax advisor, if you have additional questions.

**Q. If we have a family plan health insurance and I incur the whole deductible this year(5000)can we take this money out of both of our HSA accounts, half and half. We have separate HSAs and were told we had to even though we have a family plan. Thank you.**

A. The good news is that you can use either account to pay qualified expenses because funds may always be used tax-free to pay for expenses incurred by a spouse or dependent children, in addition to your own expenses. That is one of the great advantages of an HSA.

**Q. Can an individual who regularly gets medical treatment through the Veterans Administration open an HSA on a (separate) individual HDHP?**

A. According to the IRS rules, anyone who has received medical treatment from a VA facility within the past three months is not eligible to contribute to an HSA. The only exception is if the individual receives "preventive care" services from the VA. If only preventive care services are received from the VA, then the individual would remain eligible to contribute to their HSA.

**Q. If an employee enrolls in a qualified HDHP plan as family coverage and mid-year changes to HDHP plan single coverage due to a qualifying event. Are they eligible to contribute \$5950 or must they pro-rate their contribution based on the number of months on family coverage?**

A. If an employee enrolls in a qualified HDHP plan as family coverage and mid-year changes to HDHP plan single coverage, they must pro-rate their contribution based on the number of months of family coverage vs. single coverage. The coverage for each month (family vs. single) is determined by what they had on the first day of the month.

For example, if they had family coverage starting Jan. 1 but switched to single coverage on July 2, they would have 7 months of family coverage and 5 months of single coverage.

**Q. If I had an HDHP in 2008 but did not open an HSA until 2009 am I able to make contributions for tax year 2008 prior to the Apr 15th deadline? Where would I find the IRS reference to this question?**

A. Yes, if you were eligible at any time in 2008, you had until April 15, 2009 to make your contribution. This was spelled out in the initial guidance for HSAs (Q&A 21 of IRS Notice 2004-2), attached. Keep in mind however, that HSA funds cannot be used tax-free to pay or reimburse expenses incurred before the date your HSA account is established.

Q. My son's employer contributes to HSA. On his W-2 block 12 there the amount they contribute with a W before it. Does he have to report this on his taxes if he did not use it?

A. Your son's employer contributions to his HSA are reported on Form 8889 that he must file with his tax return.

The instructions for the form should tell you how to report it. He must report the contributions even if he does not make any withdrawals from his account.

Q. I am continuing an FSA through COBRA. Does this prohibit me or make me ineligible for an HSA as long as the FSA is available to me under COBRA?

A. If your FSA can reimburse health care expenses and is not limited to just dental, vision, and/or preventive care expenses (i.e., a "limited purpose" FSA), then the FSA will make you ineligible for an HSA. Sorry about that.

Q. Our company is requiring all employees to take a reduction in salary or in hours worked. Each employee elected his or her annual HSA contribution at the beginning of the year. Does the 10% to 20% reduction on hours count as a change in status and allow employees to change their 2009 annual HSA contribution election?

A. No, the reduction in hours does not count as a change in status that would allow employees to change their HSA election. However, if you are using a Sec. 125 cafeteria plan through which employees are making their contributions via payroll deduction, these election amounts can be changed monthly without a need for change in status.

In addition, employees that do not reach their maximum contribution through payroll deduction can always add additional money by writing a personal check to their account by April 15 of the following year. This personal contribution is then deductible on their personal income taxes.

Q. I used all my HSA funds in 2008 to pay for eligible expenses. In 2009 can I use my 2009 HSA funds to pay for 2008 expenses that were in excess of my funds?

A. Yes, you can use funds deposited for 2009 to pay for qualified medical expenses incurred in prior years tax-free, as long as the expenses were incurred after the date your HSA account was established.

Q. Please clarify for me... If my family deductible is \$5,400 and our itemized expenses through our HSA, including doctor visits, prescriptions, glasses, and aspirin exceed \$5,400, then the HDHP will cover us at 100% after we have spent \$5,400, right?

A. Each HDHP policy may work differently.

Some do cover 100% of expenses after you hit your deductible (e.g., \$5,400).

Others require you to pay coinsurance (e.g., 20%) for benefits after you hit your deductible up to a higher limit on out-of-pocket expenses. Your policy should specify which way it works.

Q. What is the down side to having an HSA?

A. In short, the answer is, "there aren't many." For most people, the advantages outweigh the disadvantages.

The biggest hang-up for most people is that you must switch to high deductible insurance from traditional insurance in order to be eligible for an HSA. Switching from traditional first-dollar coverage makes many people uncomfortable because high deductible plans are relatively new to many people. Some would rather stick with the comfort of predictable copays for physician visits and prescriptions, but don't realize how much more they pay in premiums for that coverage.

The other thing I hear most frequently is the difficulty some people have in getting information about how much things cost in advance of their medical care. While that is changing, its often not

easy to find out how much things might cost when you, not the insurance company, are paying for the care with your own money in your HSA. That is changing, but not as fast as I would like.

Please download a free copy of my book, "A Common Sense Guide to Health Savings Accounts" on my website [www.hsaed.com](http://www.hsaed.com). It discusses the advantages and the disadvantages in more detail.

**Q. Can officers of a company have HSA accounts only and the other employees be offered PPOs. Non discrimination issues?**

A. It may be possible for a company to have HSA accounts only for their officers and the other employees be offered PPOs, but it will depend greatly on how the company is organized (e.g., as a C-corp or an S-corp.), what you mean by an "officer" (do you mean shareholder?), and whether the "officers" are considered "employees" in the eyes of the IRS.

**Q. Hi-I'm currently on COBRA through Anthem from my previous job. I'm starting my own business. I have no income, but I have net worth to pay. May I get an HSA? Thank you**

A. You may open an HSA if your COBRA policy is an HSA-qualified high deductible health plan (HDHP). If not, you would need to obtain an HSA-qualified policy in another way (i.e., purchase one on your own directly from an insurance carrier). Even if you have no income, you could still take advantage of an HSA, if you are eligible.

**Q. What is the maximum that can be contributed to an HSA if the plan has an effective date of 3/1/09?**

A. Technically, the maximum amount is 10/12ths of the annual maximum because these individuals would only have HSA-qualified coverage for 10 months of the year. However, a change in the law in 2006 allows people who start their HSA-qualified coverage after the first of the year (but not later than December 1) to contribute the full amount for the year. However, they are subject to a "testing period" which requires them to maintain their coverage through the end of the following year (i.e., Dec. 31, 2010). If someone takes advantage of the full contribution but then loses or drops their HSA-qualified coverage before 12/31/10, they will have to "pay back" some of the extra amount plus a 10% penalty. The safest route is always the 10/12ths amount, but people can contribute the higher amount as long as they are aware of the potential consequences.

**Q. When an employee sets up an HSA account, do they have to contribute to the account or if the employer deposits money into the account, would that be enough? I have employees who are on a qualified HSA plan but do not have HSA accounts set up. Is that OK?**

A. There is no requirement that anyone eligible for an HSA actually contributes to their account. If the employer contributes to the account, the employee can add their own money until the annual maximum contribution amount is reached, but if the employee doesn't want to put any money into the account, they don't have to. I recommend you do whatever you can to help your employees understand the value of putting money in their HSAs, including tax savings, unlimited rollover (i.e., no "use or lose"), portability, etc.

**Q. My wife & I each have individual health plans. Mine is an HDHP & I have an HSA as well. Can I pay for my wife's qualified medical bills w/ my HSA? Thanks!**

A. Yes, you can use your HSA funds to pay for a spouse's out-of-pocket expenses, even if they are not eligible for an HSA and not covered by your health plan. That is one of the great advantages of HSAs.

Q. Can I open an HSA in the past if I was covered by a qualified HDHP during that time and now I have a traditional PPO plan?

A. Your ability to open and contribute to an HSA depends on when you had coverage under an HDHP. You still have until April 15 to open and contribute to an HSA for 2008, if you had HDHP coverage for at least one month in 2008. It does not matter that you may no longer be covered by that HDHP. Unfortunately, the deadline has already passed for prior years.

Q. We are trying to confirm whether concierge doctor fees are an HSA eligible expense. A concierge doctor is one that you pay an annual fee to, which then entitles you to unlimited office visits throughout the year. We are hoping you can assist with this as we have differing opinions on its HSA eligibility. Thanks!

A. The IRS does not generally consider concierge doctor fees as a qualified medical expense under the tax code, and it is therefore not considered an eligible expense to be reimbursed tax-free from an HSA. I'm actually trying to get the IRS to change their position as well as get Congress to clarify the law to allow it, at least the part that is pre-payment for the right to received medical care on demand. The IRS' big problem is distinguishing this part from the rest of the fee that may be only an access fee (like a country club membership fee).

So, until things change, these fees are not tax-free reimbursements from an HSA.

Q. I would like to know if someone who is over 65 and still working full-time that is covered by a HSA-Qualified HDHP can have an HSA that the employer contributes to? The member does have Medicare A as a secondary policy. Thanks.

A. People over age 65 who are covered by an HSA-qualified HDHP can continue to contribute to an HSA (or accept employer contributions to their HSA), but only if they are not enrolled in any part of Medicare. If the member is enrolled in any part of Medicare (including Part A only as a secondary policy), he or she is not eligible for an HSA. When people turn age 65, they can defer their enrollment in Medicare but it is not always easy to do (and is almost impossible if they took Social Security early).

Q. If a person has a HSA account and high deductible plan, can they participate in a stand alone vision plan such as VSP that provides a copay for eye exams and vision hardware.

A. If a person has an HSA-qualified health insurance plan, they can still be eligible to contribute to an HSA account even if they participate in a stand alone vision plan such as VSP that provides a copay for eye exams and vision hardware. Insurance for vision-related expenses is considered "permitted insurance" that does not cancel someone's eligibility for an HSA.

Q. According to the "HSA Insider" (page 6) it says that if an employee receives ANY Veterans Administration health benefits in the past three months they are NOT eligible to enroll in an HSA.

Question 1: Does this include disability related services provided to the employee even if the EE has maintained separate HDHP coverage for all non-disability related medical issues?

Question 2: Can you please explain the reasoning behind the restriction?

A. Unfortunately, the HSA "Road Rules" has many errors in it. I'm glad you contacted me for the correct information.

It is true that if an employee has received health care services or benefits from the VA in the past three months, they are NOT eligible to contribute to an HSA for that month. This summer, the

IRS clarified this somewhat stating that it is OK for individuals to receive dental, vision, and preventive care services from the VA without the 3-month rule applying. However, any other medical services received from a VA facility or clinic would make someone ineligible to contribute to their HSA under the 3-month rule.

To your specific question about disability-related services, if they are not medical in nature and would not otherwise be covered by health insurance (such as an individual's HDHP coverage), they should not generally create a problem for HSA eligibility. The HSA law says that disability insurance does not create a conflict for individuals with HDHP coverage, but the understanding is that this type of insurance is disability income insurance that pays someone a fixed amount per day/month, etc. because they have a disability.

The "restriction" is actually more beneficial to veterans than other individuals (especially those on Medicare). Here, the IRS could have said anyone who is eligible for or uses VA benefits is ineligible to contribute to an HSA, period. They did not. They said if you are eligible but don't use VA benefits, you remain eligible for an HSA. If you do use VA benefits, you are only ineligible for 3 months, not the entire year. For someone enrolled in Medicare, they can never be eligible for an HSA.

**Q. Is the HSA contribution testing period perpetual or a one time event? If I use the last month of the year rule and am subject to the test period, and then keep eligible HDHP coverage through the end of the following year, am I eligible for a full deduction for both years? (Two full deductions for thirteen months of coverage).**

A. The HSA contribution testing period is a "one time" event and only applies to the first year in which an individual begins their HDHP coverage but the coverage begins after January 1 but not later than December 1. A change in the law in 2006 allowed people to make a full year contribution to the HSA because people are usually subject to an entire calendar year deductible even when their coverage begins after January 1. However, the testing period does apply, requiring the individual who takes advantage of this rule to maintain HDHP coverage through the end of the following calendar year. Thus, if you begin your HDHP coverage before Dec. 1 of 2008 and maintain HDHP coverage through at least the end of Dec. 31, 2009, you can contribute the maximum allowed for both years and deduct those amounts on your tax return for both years. Yes, that means two full years for only 13 months of HDHP coverage. This is why the change in the law is so great.

**Q. Contributions (up to IRS limits) to an HSA can be made pre-tax which reduce wages subject to federal income tax. Are there any states that do not allow a reduction in wages for state income tax? Thank you!**

A. Contributions to an HSA are not deductible against state income taxes in only 4 states -- Alabama, California, New Jersey, and Wisconsin.

**Q. For catch-up contributions, does the individual have to be 55 on January 1 of the year to qualify? Or do they qualify if he/she turns 55 during the year?**

A. An individual does not have to be 55 on January 1 to qualify for the catch-up contribution. In the year of your 55th birthday, you are considered to be age 55 for the entire year for purposes of making a catch-up contribution. So even if your birthday falls on Dec. 31, you could make the full catch-up contribution allowed for the year.

The only reason someone who turns 55 or is already 55 or older would not be able to make the full catch-up contribution is when they do not have HSA-qualified insurance coverage for the entire year and must pro-rate their HSA contributions, including their catch-up contribution.

**Q. Can A Person have a HRA and a HSA?**

A. If an individual has an HSA and wants to remain eligible to contribute to his/her HSA, the only kinds of HRAs that they can have are:

- (1) a "limited purpose" HRA that only reimburses dental, vision, and/or preventive care expenses;
- (2) a "post deductible" HRA that only reimburses expenses after they incur a minimum amount of expenses for benefits covered by their plan (the minimum amount must be at least as high as the minimum deductible required for HSA-qualified plans, i.e., \$1,100 for individuals with self-only coverage or \$2,200 for individuals with family coverage); or,
- (3) a combination limited purpose/post deductible HRA.

If they participate in their employer's general HRA that is not one of the types described above, then they would not be eligible to contribute to their HSA. The same rules apply when a spouse has an HRA – unless the spouse's employer specifically states that the HRA can only reimburse the employee's (i.e., the spouse) expenses.

**Q. Are there any limitations with the HSA employee contribution election? i.e. can an employee change their amount every month (as long as they don't exceed the annual max)? Or is it structured more like an FSA, where you have to elect the amount during open enrollment, and can only change it with a life change event such as birth, death, etc.**

A. Employees are allowed to change their election amount every month under a cafeteria (i.e., Section 125) plan. HSAs are different from FSA elections in that regard.

**Q. Can HSA funds be used to pay for qualified medical expenses for a dependent who is not covered on the HSA plan?**

A. HSA funds can be used to pay for qualified medical expenses for a spouse or dependent child, even if they are not covered on the HSA insurance plan. That is one of the great advantages of an HSA!

**Q. Can an employee contribute to a HSA if they have a spouse on Medicare due to disability and the spouse is covered under their HDHP?**

A. Thank you for your question. One of the great advantages of an HSA is that an employee can contribute the "family contribution" amount (\$5,950 in 2009) to their HSA as long as they have 2 or more persons (i.e., family coverage) covered under their HDHP, even if the spouse is not himself/herself eligible to contribute to an HSA because they are enrolled in Medicare.

**Q. This is an HSA related question, but maybe you can help. My husband is ordered to reimburse his ex-wife 50% of any non-insured medical expenses for their children. The ex-wife has an hsa account through her employer. She contributes \$40.00 per month; her employer deposits \$1,000.00 in the hsa every January. Is my husband responsible to reimburse his ex-wife's hsa if the funds used to pay the medical expenses came from the employer contribution? Is there any case law on this issue yet? Or a general "expected outcome" should the argument be made in court?**

A. Tammy, thank you for your question. I am not aware of any case law that addresses this situation and I have no idea how a court might rule. I would recommend trying to make the case that at least \$1,000 of "non-insured" (i.e., out-of-pocket) medical expenses should be disregarded for purposes of determining how much your husband must contribute because of the amount of money put in the HSA by the employer (\$1,000).

Q. I am a disabled veteran receiving 10% disability and eligible for VA medical coverage and as such not eligible for an HSA. How do I cover my family?

A. Joseph, thank you for your question. Just because you are eligible for VA medical coverage does not automatically prevent you from having an HSA. Only if you actually use the services provided by the VA (other than dental, vision, or preventive care) would you be ineligible to contribute to an HSA. The rule is that you cannot contribute to an HSA for a given month if you used VA services within the past 3 months.

You could also rely on the VA for your medical care but obtain HSA-qualified coverage for you, your wife and children (or just your wife and children). Doing so would make your wife eligible to have an HSA and she can contribute the higher "family amount" as long as at least she and one other person are covered by the policy. The fact that you would not be eligible would not impact your wife's eligibility. Even better, if she contributes to her HSA, the contributions are deductible on your family income taxes (even if you file jointly) and she can use her HSA funds tax-free to all the family member's out-of-pocket expenses, including yours.

I hope you will look into HSAs for your family.

Q. Can I roll my 457 deferred compensation account to an HSA???

A. There is currently no way to directly roll funds from a 457 deferred compensation account into an HSA tax-free.

However, you may be able to do this through a 2-step process. First, move some of the funds from the 457 account into a traditional or Roth IRA. I don't know whether there will be tax consequences for doing so. Once the funds are in the IRA, you can make a one-time tax-free transfer from the IRA to an HSA. The IRA and HSA must be in the same person's name. Be aware that the maximum amount that can be transferred is the federal limit on HSA contributions in the year in which the transfer is completed. For 2010, the limits are \$3,050 for individuals with self-only HSA coverage and \$6,150 for individuals with family HSA coverage.

Q. Would spider vein treatments be acceptable HSA expenses?

A. Beth, thank you for your question. I'm not sure what the treatment for removal of spider veins involves, but if it involves a medical procedure that your doctor says you need and is not performed purely for cosmetic reasons, it could be considered a qualified medical expense that could be paid tax-free with HSA funds. It is hard to say definitively without knowing all the facts and circumstances. Please discuss with your doctor and your tax advisor.

Q. Can you use HSA funds to pay for ancillary (dental or vision) premiums? This is on the individual level-not thru a group.

A. HSA funds cannot be used to pay for any insurance premiums except Medicare, long-term care, COBRA, or health insurance premiums while receiving federal or state unemployment benefits.

Q. Can a law firm carve out attorneys to make eligible for HDHP, thus only attorneys would be eligible for employer contributions to HSA acct. Must all employees be eligible for HDHP?

A. Gary, thank you for your question. Yes, a law firm could offer an HDHP only to attorneys, thus making only attorneys eligible for employer contributions to the HSA account. However, keep in mind that the partners would not be considered "employees" and could not receive employer contributions tax-free. They could however make personal contributions outside of the firm and deduct them on their personal income taxes.

Q. I am currently paying for family coverage through my employer for myself and my daughter; another child is on the way and will be added to my plan next year. I would like to add my husband to my plan, but he has an HSA through his employer and doesn't want to lose the funds he's already accumulated. My concern is that illness is unpredictable and if he gets ill, we would very likely go through the \$2500 in his account and would have to pay a maximum of \$9000 out of pocket. It would not cost me any more to add him to my plan and we would only have a max out of pocket expense of \$2200.

Should he cancel his HSA and join my plan or should he bank on good health and keep his own?

A. Megan, thank you for your question. I would never recommend that someone cancel their HSA policy and not be able to deposit money in an HSA account. However, you should look at the cost of your coverage -- especially the amount of premiums you are paying -- compared to the out-of-pocket expenses you may need to pay. On the one hand, adding your husband to your family coverage (especially after the baby is born) may not increase your premium.

If it does, that is a factor to take into account compared the premium he is paying for his separate policy.

Your husband can put up to \$3,000 into his HSA for 2009 and \$3,050 for 2010.

The amount he contributes is reduces your taxable income dollar for dollar.

The money he deposits remains his property no matter where he works. There are no "use it or lose it rules" so whatever he doesn't spend he keeps forever. And he can always use it to pay out-of-pocket expenses incurred by him, you, and your children tax-free. If you do not use a flexible spending account at work, then the HSA may be an important option for your family because you pay for out-of-pocket expenses with "after tax" dollars unless you have an FSA or HSA.

The money in the HSA can also be saved for future needs, like paying for health care insurance (including COBRA continuation coverage) or out-of-pocket expenses during periods of unemployment, or saving the funds for retirement to pay for Medicare premiums, long-term care insurance and expenses, etc.

Hope that helps.

Q. Wondering the following: Client currently has FSA accounts, and will be opening an HSA in Sept 2010. They are doing a short plan year for the FSA, so that it's a clean transition. They are wanting to know the

following: If any money is left over in the FSA account, can a one time rollover of the funds be moved from the FSA into the new HSA account?

Please let me know as soon as possible, and cite the reference from the law that the answer comes from.

A. Michelle, thank you for your question. The client could possibly rollover unspent FSA funds to their HSA but its probably more trouble than its worth.

First, the amount is limited to the lesser of (1) the amount in their FSA or (2) the amount in their FSA on Sept. 21, 2006 (do they even know what their balances were then?). Second, the rollover can only be completed during a grace period which would extend the FSA plan up to 10 more weeks beyond Aug.

31 and create eligibility problems for HSAs (i.e., the FSA plan would be "other coverage" that is not HDHP) during that time.

The rules are provided in IRS Notice 2007-22 implementing the provisions of the HOPE Act of 2006 (P.L. 109-432).

Q. I will be covered in the month of January, 2010 with an HDHP, but will be changed to a non-HDHP on Feb 1. I am over 50. Can I contribute the full \$3050 + \$1,000 catch up in that one month or only 1/12? Thanks!!!

A. Mary, thank you for your question. Unfortunately, you can only contribute for one month since that is all you will be eligible. HSAs are a little different than IRAs in that you cannot make a \$1,000 catch-up contribution unless you are 55 or older. If so, you can contribute for 2010  $\$337.50 = (1/12 \times \$3,050) + (1/12 \times \$1,000)$ .

Q. I currently have an H.S.A. because I have an HDHP. In 2010 I am switching plans and will not have an HDHP. What can happen to my current account? Can I continue to spend it in 2010 and not contribute? Or do I need to close the account and take out the money at the end of the year? I am 57. Thank you.

A. Linda, thank you for your question. The good news is that you do not need to close the account or use the money by the end of the year. Any money you deposit into your HSA remains yours to use and spend for out-of-pocket expenses your (or your spouse or dependents) incur at any time in the future. You just cannot add any more money to the account until you are covered by an HDHP again. If that happens, you can just start adding money to your existing account.

Q. I just retired this year (age 62) and I am getting Social Security. I still have a high deductible insurance with the company I retired from and they contribute to my HSA. I am NOT eligible for Medicare yet. Can I make personal contributions to my HSA? Thanks!!! I need your response as soon as possible. Thanks!!

A. Richard, thank you for your question. Hope things are looking better in my home state.

Yes, you can continue to make personal contributions to your HSA until you enroll in Medicare. The contributions are deductible against your income on your federal and state income taxes. Your taxable income is reduced dollar for every dollar you contribute to your account. There is a separate line on the Form 1040 for this purpose.

Q. My wife has a family HDHP covering only her and I. She contributes the family maximum to her HSA. I will be receiving my own Traditional health plan in January. Can I remain on her HDHP (using it as secondary coverage) and have her remain eligible to contribute to her HSA at the family rate? (I understand that she cannot be on my plan (using it as secondary coverage) and remain eligible for the HSA.)

A. George, thank you for your question. Yes, you can remain on your wife's HDHP (as secondary coverage) without impacting her HSA eligibility. Doing so allows her to contribute the higher "family" contribution amount. She will also be able to pay for your out-of-pocket expenses tax-free with her HSA funds even though you are not covered by her HDHP.

Q. I opened an HSA at my bank in my name and deposited 2,000\$ in Feb of this year (2009) for my wife. My wife and child have a HDHP and are eligible. However, I am not eligible because I am a teacher with a state health plan. I believe I should have opened the account in her name. Q. What can I do to be able to still deduct this 2,000 from my taxes for this year. If I open an account for my wife and transfer the remaining money to her account will I be okay? We always file jointly so I mistakenly was not concerned whose name the account was in. Thank You for your time

A. Scott, thank you for your question. Yes, the account should be in your wife's name since you are not eligible to contribute to an HSA. I'm assuming that your state health plan does not cover your wife (doesn't matter if it covers your child) and that you do not participate in a flexible spending account through your job (that could also cause your wife to not be eligible for an HSA).

Explain to the bank that the account needs to be in your wife's name, not yours. Hopefully, they will make it easy for you to move the money to an account in her name and close your account (which should be treated as if it were never opened). You must do all this no later than April 15, 2010, which is the last day for making contributions for 2009. The sooner the better because your wife will not be able to use her account funds to pay for expenses incurred before the date she opens an account in her name.

**Q. Can a HSA owner who has accumulated 15,000.00 in their HSA transaction account move a portion of their money to a non transaction investment account? Can someone have more than one HSA account? One HSA transaction account and one HSA Investment account?**

A. Anne, the answer to all your questions is "yes." HSA account holders can have more than one HSA account and can invest some of their funds in the same types of investments permitted for IRAs -- stocks, bonds, mutual funds, CDs, etc.

**Q. I got married this year. I currently have health ins. and an HSA. January 2010 I will be under my husband's insurance and he also has ins with an HSA. We will both be contributing to the HSA. Should I close my account and contribute to my husband's HSA?**

A. Renee, thank you for your question. You have several choices. One is to keep your HSA and put some of your "family" contribution in your account and some in your husband's account. Or you could keep your account even though you put all your future "family" contributions into your husband's HSA account. Keep in mind that when you turn 55, you will need separate accounts anyway because you have to put your catch-up contributions into separate accounts.

You will not be able to "close" your account without paying penalties unless you use the funds to reimburse or pay for qualified medical expenses you (or your spouse or dependents) incur. At this time, there is no tax-free way of combining your existing HSA funds with an HSA in your husband's name.

**Q. Can I have a HSA and HRA at the same time. My company is a s corp.**

A. Dan, thank you for your question. Yes, you can have an HSA and HRA at the same time. However, the HRA must be a type of HRA that does not impact your HSA eligibility. The only types of HRAs that won't impact your HSA eligibility are:

1. A "limited purpose" HRA that only pays for dental, vision, and/or preventive care expenses.
2. A "post-deductible" HRA that only pays for medical expenses after employees incur at least \$1,200 of medical expenses if they have self-only coverage or \$2,400 of medical expenses if they have family coverage, in 2010.
3. A combination HRA of #1 and #2.

It doesn't matter whether your company is an S-corp or another type of company. However, if you or anyone else owns more than 2 percent of the company, they are not considered "employees" which may affect their ability to receive some of the HSA and HRA benefits tax-free.

**Q. What happens when a customer loses HDHP ins. Can this money be put into a traditional Ira or left in the HSA. Next: Explain the 13 month test period.**

A. Janet, thank you for your question. When someone loses their HDHP insurance, the HSA remains an HSA forever. It cannot be converted to another type of account (e.g., an IRA). However, the funds can still be used tax-free for qualified medical expenses until the account is depleted, or the individual regains HSA eligibility and begins adding more funds to the account. If the individual wants to use the funds for other purposes, then they must pay income taxes and a tax penalty (no penalty beginning at age 65).

The testing period only applies to a one-time rollover from an IRA to an HSA.

Q. a wife age 64 is cover under her husbands age 59 hdhp, have family hsa in his name, she goes on Medicare at 65, can they still spend hsa\$ on her expenses? now, new contributions are single only?

A. Jay, thank you for your questions. Once the wife enrolls in Medicare, the husband can continue use his HSA funds to pay for his wife's qualified expenses. However, there is a technical issue you need to be aware of -- the husband cannot pay for his wife's Medicare premiums (Part B and Part D) until he turns age 65.

Regarding how much the husband can contribute to his HSA after the wife enrolls in Medicare depends on whether she (or anyone else) is covered by his HSA policy. If so, he can continue to contribute at the higher "family" level. If not (i.e., he changes to "self-only" coverage), he can only contribute up to the single limit.

Q. My company is offering this program. I am currently covered only as a single in a regular ins program. My husband is in a union and has insurance for the family but it is not good. Does it pay for me to switch to this ins. for a family of 4 by taking the 6000.00 deductible from my IRA account using the Tax Relief and Health Care Act of 2006? Someone told me that if there was any money left over at the end of the tax year that I would have to pay tax on that, is that true? Thanks for you help. This is all very confusing!

A. Michele, thank you for your question. Switching to an HSA insurance plan and using money from your IRA account to fully fund the account could be very beneficial to you and save you a lot of money. Without knowing the details of the current plan you are on and what your HSA plan might look like, I can't make a personal judgment for you about whether this is the best option for your family.

A couple things to keep in mind if you decide to do this:

1. You can only transfer funds from an IRA to an HSA one time -- this is not an annual opportunity.
  2. The IRA from which you transfer funds and the HSA account to which you transfer the funds must be owned by the same person (you or your spouse).  
For example, you cannot transfer funds from an IRA in your name to an HSA in his name.
  3. There is a "testing period" that you need to be aware that runs for 12 full months beginning with the month after you make the transfer. If you change or lose your insurance during that time, you may have to pay some taxes on the amount you transfer from your IRA. However, once the money is in the HSA account, any left over money automatically rolls over to the next year and is available to be used to pay for or reimburse out-of-pocket expenses incurred by you, your spouse or dependents. You do not have to pay taxes or penalties on the unused funds, unless you fail the "testing period"
- I described above.

Hope that helps. Let me know if you have further questions. You may also want to download my free book about HSAs on my website.

Q. I own a business and elected an HSA plan starting 9/1/09. I have a rider that covers students to age 25. My 25 yo daughter is on my health plan and will be a FT student until 9/15/09. She is covered by my plan until 12/31/09. However, NY State just passed a law requiring insurance companies to offer family coverage thru age 29 (at parent expense). Therefore she will remain on my coverage for several more years (potentially). Knowing all this I opened a family HSA (max \$5900) thinking she would be considered "family". Is this correct or should it be an individual HSA (more limited individual max) and I can use HSA \$\$ to pay her deductible expenses. Or can I not use HSA \$\$ for her at all (in which case I should have taken another plan). Thanks!

A. As long as at least 2 people are covered by your health insurance policy, you have "family coverage" for purposes of an HSA. It doesn't matter who the other person is or even if they are

related to you. So you could open an HSA in your name and contribute the full amount (\$5,950 for 2009) to an HSA in your name.

Because of a loophole in the law, your daughter may also be able to open an HSA in her name and contribute \$5,950 to her HSA too because she also has family coverage! You would need to make sure she can no longer be claimed as a dependent (whether you do or not) and deduct your contributions on separate tax returns. Be sure to check with a tax advisor or attorney on the rules for determining who is a dependent and when!

The catch is that your daughter probably no longer qualifies as a "dependent" so you would have to stop using your HSA funds for any qualified medical expenses she incurs after she can no longer be claimed as a dependent. Likewise, she would not be able to use any of her HSA funds to pay for your expenses. But the contributions you are both allowed as I described above should offset that, I imagine.

**Q. Are employees allowed to make advance contributions to HSA accounts and then require that employees pay back that amount if they leave the company before the time it would've taken to accrue that amount?**

A. Once an employer makes a contribution to the employee's HSA account, the money belongs to the employee and the company cannot ask for the money back under any circumstances unless it turns out the employee was never eligible for an HSA. Employers can advance contributions to employees but have to follow certain rules, including not requiring the money to be paid back if they leave early.

**Q. if my hsa acct was maxed and now is empty for 09, can i pay eligible expenses now and reimburse myself in 2010?**

A. Yes, once you have deposited funds into your HSA in 2010, you can reimburse expenses incurred in 2009, as long as the expenses were incurred after the date you opened your HSA account.

**Q. can an employer contribute funds into an individual hsa? this is the president of a company who waived off the group plan and bought an individual HSA plan**

A. An employer may make contributions to any HSA-eligible employee's account, regardless of whether the employee obtains their HSA-qualified coverage from the company, their spouse's employer, or on their own. Having said that, the president of the company can only receive HSA contributions from the company tax-free if he/she is actually an "employee." Depending on how the company is organized and structured (e.g., S-corp, LLC, partnership), the president may not be considered an "employee."

**Q. Can HSA funds be used to pay for qualified medical expenses for a dependent who is not covered on the HSA plan?**

A. Sandra, yes, HSA funds be used to pay for qualified medical expenses for a spouse or dependent child, even if they are not covered on the HSA insurance plan. That is one of the great advantages of an HSA!