Webinar Title Q&A – the following questions were asked during the two Advanced HSA Concepts webinar sessions in February 2018

Q: When you say the plan document must be amended to add language regarding allowing HSA to be pre-tax, are you referring to the carrier plan document or the service agreement with EBC?

A: We use the Service Agreement initially to define the plan parameters when a group is first in onboarding and as a result, we create the plan document, summary plan description and My Company Plan for employers. Any employer contributions to the HSA or the option for pre-tax salary reductions for HSA must be defined in the plan document, SPD and My Company Plan for our clients, according to details gathered in the Service Agreement. For an employer that uses another third party administer the employer should confirm their process for plan documentation.

Q: What about worksite benefits such as AFLAC?

A: Many of the worksite benefits (i.e. accident, cancer, hospital indemnity, etc.) would be HSA compatible. You should confirm with the carrier whether or not their product is HSA compatible to know for certain.

Q: Does Medicare Part A disqualify you from contributing to a HSA?

A: Yes. The deductible on Medicare Part A is too low to be considered HSA compatible and would disqualify an individual from HSA eligibility.

Q: If the underlying qualified HDHP includes OOP maximums that exceed the IRS maximums but the Employer's HRA reimburses the EE for OOP expenses and the NET OOP is below IRS maximum guidelines then is the Plan is treated as meeting requirements?

A: It is my understanding that the underlying major medical plan must meet the minimum deductible and maximum out-of-pocket limits to be considered a qualified high deductible health plan (HDHP).

Q: Can you discuss the dependent rule again? Under age 26 can be on the parents plan, but if they are not claimed as a dependent they cannot use the HSA monies? They can open their own account and contribute on their own?

A: If the adult child is not an income tax dependent of the parent, they can be covered under the employer sponsored health plan tax free; however, the parent cannot use their HSA dollars for the adult child who is not an income tax dependent. The adult child can establish their own HSA and contribute

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up to the family maximum because they are enrolled in family coverage. The adult child can use their HSA dollars for their expenses and if applicable their spouse and tax dependents even though they are not covered under the adult child's parent's health plan. So in the case both the parent and the adult child can establish an HSA and each fund their account up to the family maximum without any requirement of coordinating the family limit.

Q: Are Medicare Supplement premiums allowable as an HSA expense?

A: Deductible health insurance premiums (other than for a Medicare supplemental policy) for an HSA accountholder who is 65 years old or older can use an HSA on a tax-free basis for those expenses, including medical premiums for an employer's insured or self-insured retiree health coverage. An HSA accountholder who is age 65 or older and has Medicare Part A, Part B, Part C or Part D deducted from Social Security benefits can also take a tax-free HSA distribution equal to the Medicare premium deduction. HSAs generally cannot be used by retired HSA holders for their health insurance premiums prior to age 65—with the exception of COBRA, USERRA, or premiums paid while receiving unemployment.

Q: It would appear it's better to have the plan year follow the calendar year. Does that make recordkeeping easier? I am thinking of recommending it for my company.

A: A calendar year plan would run in sync with the HSA contribution limits and may be easier to run the cafeteria plan and insurance year all on the same cycle. It is more advantageous for the insurance year and cafeteria plan year to be in sync because of the change of status rules. The HSAs can be changed prospectively for any reason.

Q: If an employer has a HDHP and a Post Deductible HRA, and would like to add a HSA, is the only option a Limited FSA that reimburses only vision and dental expenses (excluding dependent care)?

A: The Limited Health Care FSA would be a good addition to this benefit mix so the employee can set aside dollars for predictable dental and vision expenses as well as contribute to the HSA pre-tax under the cafeteria plan.

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Q: So in your HSA compatible HRA example the deductible under the plan must be 'non-embedded' correct?

A: In order for the HRA to be HSA compatible, the HRA cannot begin reimbursing on family coverage until the employee incurs a minimum $2,700 aggregate deductible. So it is possible to have an insurance plan that has an embedded deductible as long you can meet the minimum family deductible criteria.

Q: Stacking an HSA with Limited FSA and the ER contributing $500 and $1,000 in the FSA an EE COULD max out at $7,600 or $11,550 for FAM coverage if they are over age 55.

A: Agree. If you fund the maximum HSA amount $3,450 Single or $6,900 Family, can make an additional $1,000 catch up contribution, are eligible for an employer contribution to the Limited FSA and fund the maximum employee contribution to the Limited FSA.

Q: A member changed from HSA to HMO at open enrollment. The client wants the member to pay the maintenance fee if they're still an Active EE; they only want to pay if they're enrolled in the HDHP. Therefore, can this be done by the client?

A: The employer could implement such a condition on the HSA fees as long as it is communicated to the employees. HSAs are individually owned accounts and there is no requirement that the employer pay fees or provide employer contributions to the accounts.

Q: If a husband and wife take coverage under an HSA plan - one as EE only coverage and the other carries the children as employee + child coverage. Can they make the full family contribution for the Employee/children and then individual contribution for the Employee only coverage?

A: No the there is a maximum family contribution limit of $6,900 for 2018 (plus any catch up contribution they might be eligible for). The husband and wife must coordinate their contributions so they don't exceed the family contribution as an aggregate between them.

Q: Can LPFSA funds be used for hearing expenses if they are not covered on the health plan and if so, under what circumstances and how does the employer include this in the 125

A: No, the Limited Purpose Health Care FSA, can only be used for dental and vision expenses. You would be able to use HSA dollars for hearing expenses whether they are covered under the medical insurance or not.

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Q: The group health plan is HDHP $2,000 /$4,000 Deductible, max out of pocket $2,000/$4,000. Can employer contribute $2,000 (single deductible) to the HSA?

A: Yes it is possible for the employer to fund the HSA based upon the deductible on the HDHP.

Q: Can someone purchase an AFLAC Hospital insurance plan along with a HDPPO?

A: Unless otherwise specified in the policy, a hospitalization policy that pays a daily benefit for example and bought as a voluntary plan generally would be an excepted benefit and should be HSA compatible.

Q: If you have a HDHP w/HSA or HRA's and now mid-year the employer changes insurance to traditional $500 deductible plan - what tax consequences are there for the employer and the employee? Anything else we should consider before making the change?

A: No tax consequences for the employer, only the employee (taxpayer) in the event they have excess contributions in their HSA. If they are no longer enrolled in a qualified HDHP, they would only be eligible for 1/12 of the annual contribution for the number of months they are enrolled in the qualified HDHP and HSA eligible.

Q: Can an employer require that an employee be enrolled the following year in the FSA to get the rollover or grace period?

A: No for grace period. Yes for rollover if employer has adopted that feature as part of the cafeteria plan design.

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

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

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

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

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

A: Keep in mind that the recordkeeping on the HSA will fall back on the employee and in the event of an audit, that individual would supply evidence that would support their HSA distributions for the tax year. It would seem reasonable that the individual could substitute another eligible expense during the same tax year to support their distribution. If they don't have an alternate expense incurred during the same tax year for substitution, technically it would be a non-qualified distribution that is self-reported as such and would be subject to income taxes and the 20% penalty.

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

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

- If they were enrolled in a Limited Health Care FSA or a Dependent Care FSA, neither of these has any impact on HSA eligibility.
- If the new hire employee had a Health Care FSA at the prior employer and did not elect to continue the Health Care FSA under COBRA, they are immediately HSA eligible with your plan as soon as they enroll in the qualified high deductible health plan. It is also possible that they are in a runout period to file claims against the election for services incurred prior to the termination date with the old employer without disqualifying them from your HSA primarily because the runout period is simply an administrative time to file paperwork. So assuming that that the new hire is eligible to contribute to the HSA, the full contribution rule would permit the employee to contribute the full annual amount based upon the type of coverage they have on

12/1. They can retain the tax benefits for the entire year if they remain on a qualified HDHP for the entire next calendar year.

- If the new hire employee enrolled in COBRA for the Health Care FSA at the prior employer, the Health Care FSA would be considered disqualifying coverage. If they pay the COBRA premiums through end of the plan year at their prior employer that could also potentially trigger the grace period or rollover which would further delay HSA eligibility.

Q: If the employee does not have Medicare, they can contribute to the HSA but can that employee contribute family level ($6,900 for 2018) if the spouse is still covered.

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

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

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

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

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

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

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

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

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

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

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

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use up any remaining balance from 1/1/17-12/31/17 with expenses from that same 2017 time period, you will not trigger the rollover and will be HSA eligible under 4/1/18 if the runout period is 3 months.

- If you have a Health Care FSA that has the rollover, and you have money left at midnight on 12/31/17, you potentially trigger the rollover. If during the runout period (1/1/18-3/31/18) you use up some of the remaining balance from 1/1/17-12/31/17 with expenses from 2018, and at the end of the runout you still have a remaining balance, you will trigger the rollover and will not be HSA eligible until at least 1/1/19 or longer if they have any rollover at the end of 2019.

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

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

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

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

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

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

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

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

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