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Thank you for joining us.



Account-Based Health Plans

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*Presented by the Regulatory and
Legislative Strategy Group*



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Account-Based Plans Overview



What Are Account-Based Plans?

Healthcare FSA/HRA

Employer-provided group health plans that allow for the payment or reimbursement of expenses for medical care on a tax-favored basis.

HSA

Tax-favored trust or custodial account used to pay for qualified medical expenses

- Often subject to eligibility restrictions and contribution limits
- Medical care expenses as defined under Code section 213(d)*
- Depending on the design, may be subject to ERISA, COBRA, HIPAA and IRC nondiscrimination rules

**The IRC definition of “medical care” in Code § 213(d) includes care for the:*

“diagnosis, cure, mitigation, treatment or prevention of disease, or for the purpose of affecting any structure or function of the body...”

Health Savings Accounts (HSAs)



Health Savings Account (HSA)



What is an HSA?

Tax-exempt trust or custodial account owned by the individual



What is it for?

May be used for eligible medical expenses of the individual, spouse & dependents



Are there any special requirements?

Must be covered by a high deductible health plan (HDHP) as defined by law;

and

Not enrolled in another benefit plan that provides first-dollar coverage (other than for “permitted coverage”)

High Deductible Health Plan (HDHP)

Federal Standards*:

- Minimum Annual Deductible (indexed for inflation - 2023):
 - » Individual contract
 - \$1,500 non-embedded
 - \$3,000 embedded
- Other than individual contract: \$3,000 (2023)
 - Satisfied by one or more covered members before plan benefits begin
 - » Preventive services may be covered before minimum annual deductible is satisfied

Maximum Out-of-Pocket (OOP) Limit:

- » \$7,500 Individual
- » \$15,000 Family
- » If individual out-of-pocket maximum is not embedded in family contract, individual OOP limit in a family HDHP contract cannot be greater than \$9,100 (as indexed – 2023) under ACA

2024 indexed HDHP standards just announced (Rev. Proc. 2023-23):

Minimum Annual Deductible
\$1,600 Ind./\$3,200 Embedded/\$3,200 Fam.

OOP Maximum
\$8,050 Ind./\$16,100 Fam.

ACA 2024 Indiv. OOP limit \$9,450

**California state law requires family health plan contracts to include a per-individual (embedded) deductible and out-of-pocket cost sharing limit that is “no greater than the amount for an individual plan or policy.” (CA Ins. Stat. AB 1305)*

Who Is Eligible to Establish an HSA?

Any individual covered under a High Deductible Health Plan (HDHP):

- Not enrolled in Medicare
 - » Watch out for retroactive enrollment due to events like the start of Social Security benefits, which can retroactively apply as early as six (6) months prior to the event
- Not covered under another health plan that is a non-HDHP plan that provides first-dollar coverage (other than preventive care) before satisfying the applicable IRS minimum annual HDHP deductible:
 - » Group or individual health plan with lower annual deductible, higher OOP limit or copays before deductible
 - » General purpose HRA or health FSA
 - » Certain on-site clinics and other supplemental benefits
 - » For plan years beginning on or after 1/1/2025, telehealth plans
- Cannot be claimed as a tax dependent on someone else's tax return



HSA Contributions

EMPLOYEE HSA CONTRIBUTIONS

- May be made through pre-tax payroll deductions through the employer's Section 125 cafeteria plan*
 - » HSA must be listed as an available benefit (pre-tax HSA contributions) in the cafeteria plan documents
- If employee contributions are made through a cafeteria plan, employer contributions may also be considered to be through a cafeteria plan
 - » This allows employer contributions to be received by an employee on a pre-tax basis, and avoids the HSA comparable contribution rules
- Employees must be allowed to change their elections at the very least on a monthly basis, and without the need for a corresponding change in status

**California and New Jersey do not recognize HSAs within their revenue code – i.e., HSA contributions are excluded from income for federal tax purposes only, but for residents of those states, HSA contributions are taxable income for state tax purposes.*

HSA Contributions

EMPLOYEE HSA CONTRIBUTIONS

Maximum Annual HSA Contribution Limit

- Employer contributions to an employee's HSA are included in the maximum amount an employee is eligible to contribute to their HSA on a calendar year basis

Employer Contributions May Be Excluded from Income Tax and FICA Withholding

- So long as employer HSA contributions added together with any other HSA contributions (e.g., employee/spouse HSA contributions) do not exceed an employee's annual maximum contribution amount; and
- So long as it was reasonable for the employer to believe those amounts would be excluded from income

Section 125 Non-Discrimination Testing

- Employer contributions to an employee's HSA through a Section 125 cafeteria plan are subject to Section 125 nondiscrimination rules

Employer HSA Contributions Outside of Cafeteria Plan

EMPLOYEE HSA CONTRIBUTIONS

- Comparable contribution rules require employer contributions to be the same for comparable participating employees (based on HDHP coverage tier)
- Employer contribution for next-higher tier must be at least equal to employer contribution for lower tier, for example (3-tier contribution structure):
 - » If employer contributes \$500 per year for employee-only HDHP coverage, must contribute at least \$500 for employee + 1 dependent HDHP coverage
 - » If employer contributes \$1,000 for employee + 1 dependent HDHP coverage, must contribute at least \$1,000 for family HDHP coverage
- May differentiate based on the following classifications only:
 - » Current active employees vs. former employees
 - » Non-union employees vs. employees subject to a valid collective bargaining agreement
 - » Full-time vs. part-time employees
- This normally prevents the employer from making matching contributions based on the employee's elections (e.g., Employer may be prevented from contributing greater HSA contributions for the PPO option over the HMO option)

Allowing employee contributions through a cafeteria plan avoids the comparable contribution rule.

Annual Contribution Limits

- Catch-up contributions for individuals aged 55 and older by end of the tax year = \$1,000
- Excess contributions are included in the individual's gross income and subject to 6% excise tax if not distributed (along with any earnings) from the HSA account before the tax filing deadline for the applicable year (typically April 15th of the year following the applicable tax year)



- 2023 annual HSA contribution limit for individuals enrolled in self-only HDHP coverage is \$3,850 (\$4,150 for 2024)
- 2023 annual HSA contribution limit for individuals enrolled in family HDHP coverage is \$7,750 (\$8,300 for 2024)

Multiple HSAs in the Family

HSAs are individually owned accounts

- Cannot be shared or jointly owned by spouses (but account holder may name a beneficiary in the event account holder dies with an account balance)
- If both spouses of a married couple are HSA eligible, and either spouse is covered by family HDHP coverage (other than self-only coverage), then both are treated as having family HDHP coverage and may divide the total applicable family maximum contribution amount between them
 - » They can allocate contributions between them
- This rule does not apply to adult dependents and domestic partners
 - » Catch-up contributions are allocated separately to each spouse and one spouse cannot take advantage of the other spouse's catch-up contribution
 - » They can generally contribute the full amount allowed for family coverage into their own HSA if they are also enrolled in family HDHP coverage



Special Contribution Rule

“LAST MONTH RULE”



An individual may contribute the entire annual limit when first eligible for an HSA, provided they are eligible on the first day of the last month of the tax year (December 1st for most of us) and continue to be HSA eligible throughout the entire 12 months after the last day of the last month of the applicable tax year.

- The last month rule assumes that the account holder had the same HDHP coverage for the entire year, based on coverage effective on December 1st
- If the employee is enrolled in the family tier as of December 1st of the applicable year and remains HSA eligible until December 31st of the following year, the individual is eligible to contribute up to the family maximum for the applicable year
- However, if the employee joins HDHP mid-year and contributes the maximum amount to an HSA, they must remain eligible for at least 12 months after the last day of the last month of the applicable tax year (December 31st for most taxpayers), or they will be subject to taxes and penalties on the excess HSA contribution

HSA Corrections

MISTAKES HAPPEN

What happens when ineligible contributions are made to an HSA?

- It appears the IRS differentiates between those that were never eligible and those that lose eligibility

For those that were never eligible:

- No deductions for individual contributions
- No tax exclusions for employer contributions
- Corrections required for income reporting and tax withholding
- Employer contributions can be recovered if the custodian permits

For those that lose eligibility:

- Curative distribution can be used if excess contribution and net income attributable to an excess contribution are distributed before the account holder's federal income tax return filing deadline
 - » **One issue:** Employers generally must rely on employees to refund an employer's excess contribution because the contributions are nonforfeitable

HSA Corrections Continued

MISTAKES HAPPEN

What about contributions in excess of the statutory maximum or contributions made due to an administrative error?

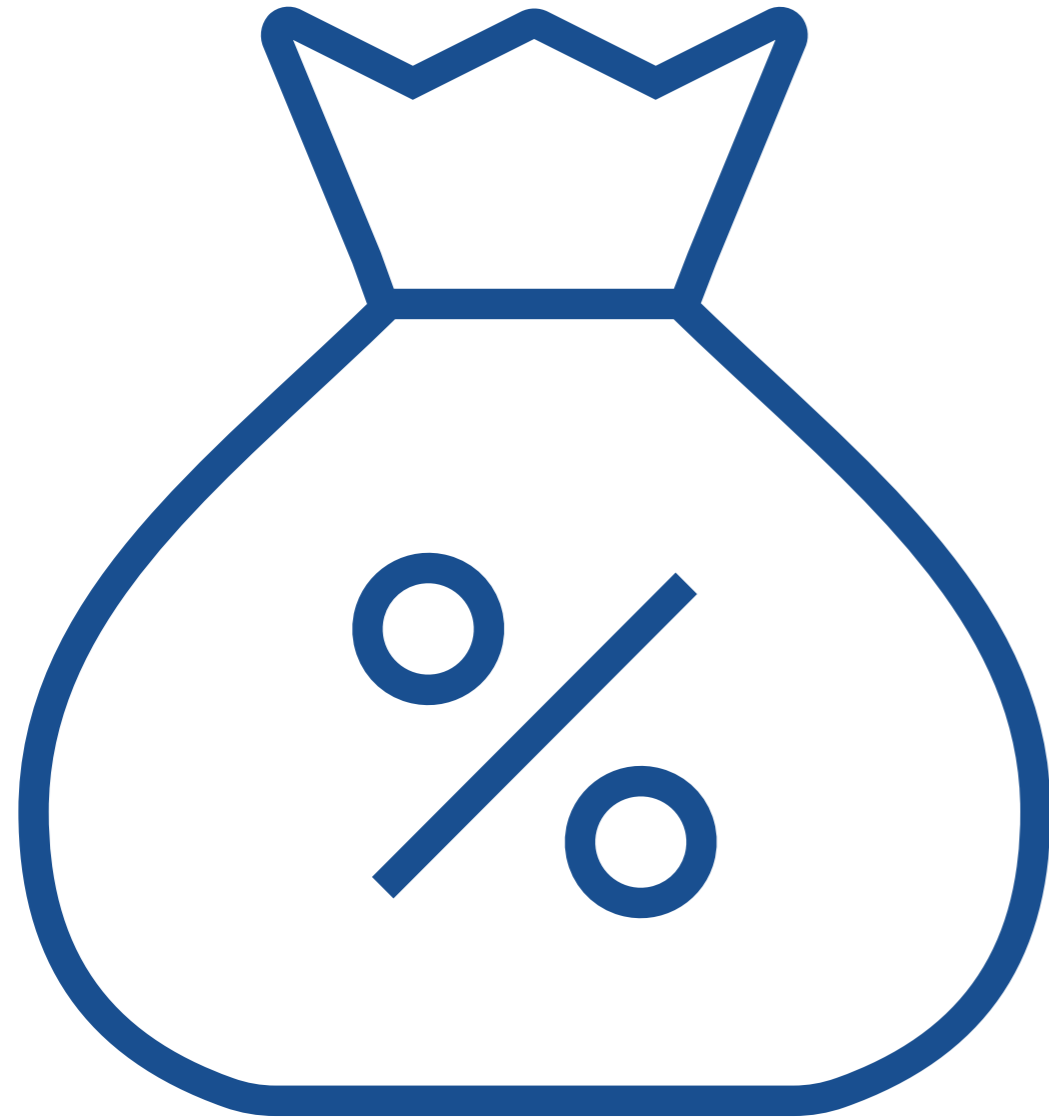
- Curative distribution can be used if excess contribution and net income attributable to an excess contribution are distributed before the account holder's federal income tax return filing deadline
- If the employer made the excess contribution or a contribution as a result of an administrative error, the employer may seek to recoup the erroneous contributions

Employers should discuss corrections with legal counsel/tax advisor.



HSA Distribution Rules

TAX QUALIFIED



- If taken for qualified medical expenses
 - » If non-qualified expenses, income tax and 20% penalty apply
- May only be used for expenses incurred on or after the date the HSA was established
- May use funds for expenses incurred in prior year if the HSA was in existence on or after the date the expense was incurred

Distributions for non-qualified expenses for age 65 or older: ordinary income tax will apply but the 20% penalty does not apply.

Qualified Medical Expenses

EXAMPLES

- Most medical care that is subject to your deductible:
 - » Copays
 - » Coinsurance
 - » Doctor visits
 - » Inpatient or outpatient treatment
 - » Prescription and OTC drugs
- Insulin (with or without a prescription)
- Dental and vision care
- Select insurance premiums
 - » COBRA
 - » Qualified long-term care insurance
 - » Health insurance premiums paid while receiving unemployment benefits
 - » Health insurance after you turn 65 except for a Medicare supplement policy

Non-Qualified Medical Expenses

EXAMPLES



- Insurance premiums (other than the exceptions listed on previous slide)
- Surgery purely for cosmetic reasons
- Expenses covered by another insurance plan
- General health items such as tissues, toiletries and hand sanitizer

Midyear HSA Election Changes

- Section 125 irrevocable election rules do not apply to HSA's funded pre-tax through a Section 125 plan since HSA eligibility is determined prospectively on a month-to-month basis
- Cafeteria plan may permit employees to make prospective salary reduction elections (or change/revoke elections) at any time during the plan year, effective before salary becomes currently available
 - » Election changes should be permitted at least once a month (may be more frequent)
 - i.e., any restrictions must be reasonable



**Health Flexible
Spending Account (FSA)**



Health Flexible Spending Account (FSA)



What is a health FSA?

- Tax-advantaged self-insured medical reimbursement plan
 - Group health plan and employee welfare benefit plan



What is it for?

Reimburses eligible medical expenses not covered by health plan

Who Is Eligible to Participate

- Any common-law employee, subject to employer plan design exclusions
 - » Eligibility typically limited to employees eligible for the employer's medical plan
- Greater than 2% shareholders of S Corp and family members, LLC members, partners in a partnership and sole proprietors **CANNOT** be eligible.



Health FSA Funding

- Can be funded with pre-tax payroll deductions through a Section 125 cafeteria plan and/or employer contributions
- Employee contributions subject to indexed annual limits:
 - » \$3,050 in 2023
 - » Carryover limit from plan year beginning 2023 to 2024 is \$610
 - » Employer may set annual contribution limit (up to statutory maximum)
- Limit applies on per-employee basis regardless of number of other individuals (spouse and dependents) whose expenses are reimbursable

*To qualify as excepted benefit, maximum annual health FSA benefit cannot exceed the greater of 2x employee salary reduction contributions or the employee's salary reduction contributions plus \$500.



Remember: Although employer contributions are not considered part of the annual employee contribution limit, employer health FSA contributions must comply with maximum benefit requirement* for health FSA to qualify as excepted benefit.

Use-or-Lose Rule

Contributions not used to reimburse medical expenses incurred during coverage period (i.e., plan year) will be forfeited unless exception applies.

Carryover

- Health FSAs may carryover \$610 (indexed annually) at end of plan year to be used for qualified medical expenses incurred in subsequent plan year
 - » Optional: Employer must include carryover provision in cafeteria plan document

Grace Period

- Unused amounts remaining at end of the plan year can be used to pay or reimburse FSA expenses incurred during a grace period of up to 2 ½ months after the end of the plan year
 - » Optional: Must be included in cafeteria plan document

Employers may not allow for both a carryover and grace period —must choose one.

Uniform Coverage Rule

HEALTH FSAS OFFERED THROUGH A CAFETERIA PLAN

Must be uniform coverage throughout coverage period (usually 12 months)

- Maximum reimbursement amount must always be available during coverage period
 - » Includes salary reductions and nonelective employer flex credits
- Employee salary reductions cannot be increased/accelerated based on their health FSA claims/reimbursements
- Reimbursements cannot be restricted or limited to amount employee has contributed
- If employee contributions cease, coverage ceases (subject to COBRA rules)
 - » Claims reimbursed only if incurred when coverage in force (no spend-down provision applies)
 - » Expenses must be submitted within claims substantiation period defined in plan document

Example: \$1,000 employee contribution plus additional \$500 employer contribution for January 1 plan year. An employee with \$1,100 claim in March must be reimbursed the entire \$1,100 even though only a fraction of the expense has been contributed to the health FSA by March.

Expense Reimbursement

ONLY QUALIFIED EXPENSES FOR MEDICAL CARE DEFINED UNDER CODE §213(D)

- Cannot reimburse medical care expenses already reimbursed from other health plan coverage or that will be claimed as tax deduction
 - » Participant must attest that expense has been incurred and not previously reimbursed
 - » Third-party substantiation
- Type of expense must be permitted (not excluded) under health FSA plan document
 - » Plan document may be more restrictive than expenses permitted under IRC
- Reimbursement request must be less than the maximum limit provided by plan
- Expense must be incurred by employee, employee's spouse, employee's child under age 27 or qualified tax dependent
- Cannot reimburse insurance premiums

Health FSA Nondiscrimination

Code §105(h) – Self-Insured Medical Plan, Including Health FSA Offered Under Cafeteria Plan

- Prohibits discrimination in favor of highly compensated individuals (HCIs)
- Tests whether reimbursements under health FSA are taxable
 - » Eligibility Test – Cannot discriminate in favor of HCIs as to eligibility to participate
 - » Benefits Test – Cannot discriminate in favor of HCIs as to the benefits provided under the health FSA

Code §125 – Health FSA Offered Under Cafeteria Plan

- Prohibits discrimination in favor of highly compensated and key employees
- Determines whether reimbursements under health FSA are taxable for HCIs
 - » Eligibility Test
 - » Contributions and Benefits Test
 - » Key Employee Concentration Test

Health FSA Election Changes – Sec. 125

Health FSAs Offered Through Cafeteria Plans Are Subject to the Section 125 Irrevocable Election Rule

- Permitted election change rules allow midyear election changes to health FSA salary reductions during the coverage period only in limited circumstances:
 - » Birth, adoption, placement for adoption
 - » Marriage, divorce, legal separation, annulment or death of spouse/dependent
 - » Dependent gaining or losing eligibility due to age or student status
 - » Change in employment status of employee, spouse or dependent that causes gain/loss of eligibility
 - » Employee commencing unpaid non-FMLA leave if eligibility is affected
 - » Change in residence of employee, spouse or dependent only if health FSA eligibility is affected
 - » Judgement, decree or order
 - » Medicare/Medicaid entitlement or loss of coverage
 - » Employer adds health FSA benefit
 - » Can reinstate election when commencing or returning from FMLA leave (change permitted only with intervening election change event)

Applicable Laws and Regulations

ERISA – Employee Welfare Benefit Plan

- Applies to private-sector and nonprofit entities (governmental and certain church plans exempt)
- Health FSAs are subject to ERISA plan document and SPD disclosure requirements
- Form 5500 - Health FSAs offered under a cafeteria plan are ERISA benefit plans

COBRA – Group Health Plans

- Subject to COBRA unless small employer (fewer than 20 employees) or church plan
- COBRA must be offered to qualified beneficiaries experiencing a qualifying event
- Special limited COBRA obligation for certain health FSAs:
 - » Overspent account – Remaining annual limit \leq max COBRA premium that can be charged - COBRA not required
 - » Underspent account – COBRA required but may be terminated at end of year in which qualifying event occurs

Applicable Laws and Regulations

HIPAA

- Exception to HIPAA portability and nondiscrimination requirements for health FSAs that qualify as excepted benefit
 - » Most health FSAs designed as excepted benefits to comply with the ACA
 - » Excepted Benefit = No need for employee to be enrolled in other health coverage
 - **For health FSA excepted benefit status,** employees must be eligible to enroll in a major medical plan to be eligible to participate in the health FSA
- HIPAA privacy provisions apply unless plan sponsor self-administers claims under plan and there are fewer than 50 participants

ACA

- Excepted benefit FSA not subject to ACA market reforms (e.g., preventive services mandate)
- Excepted benefit conditions:
 - » Availability – Other nonexcepted group health plan coverage (e.g., major medical) must be available for the year to the class of participants by reason of their employment
 - » Maximum Benefit – Max benefit payable under FSA cannot exceed two times the participant's salary reduction election under the health FSA for the year (or, if greater, the amount of salary reduction election for the health FSA for the year plus \$500)

Health Reimbursement Arrangement (HRA)



Health Reimbursement Arrangement (HRA)



What is an HRA?

Employer-financed self-insured reimbursement arrangement



What is it for?

Reimburses eligible medical expenses not covered by health plan

Who Is Eligible to Participate

- Any common-law employee, subject to employer plan design exclusions
 - » Eligibility typically limited to employees eligible for the employer's medical plan
- Greater than 2% shareholders of S Corp and family members, LLC members, partners in a partnership and sole proprietors CANNOT be eligible



HRA Funding

- Financed solely with employer contributions
- No employee contributions means HRAs are not financed through pre-tax salary reductions or under a Section 125 cafeteria plan
- Account may be seeded upfront at beginning of year with entire amount available for reimbursement or pro-rata (e.g., per payroll period, monthly, etc.)
- Employers may allow employees to carryover unused account balances and can place limits on amounts carried over



There is no employer HRA contribution limit (i.e., no dollar cap on the amount employer can contribute per year, month, or coverage period).

HRA Integration Rules

HRAs Integrated with Group Health Plan (most common)

Integrated HRAs satisfy ACA market reforms (e.g., prohibition on annual/lifetime limits and preventive services mandate) so long as group health plan complies

- Group health plan sponsored by employer or another employer
- HRA eligibility available only to employees actually enrolled in other non-HRA group health coverage integrated with HRA
- If the employee is also eligible to receive HRA reimbursements for healthcare expenses of family members (e.g., spouse, dependent children) then those family members must also be enrolled in the group health plan

HRAs can be integrated with non-HRA coverage that does not provide minimum value if reimbursement is limited to copayments, coinsurance, deductibles and premiums under the non-HRA

Stand-Alone HRA (i.e., not integrated with other group health plan)

- Permitted only in limited circumstances
 - » Retiree-only HRA
 - » Limited-scope HRA (limited-scope dental or vision benefits)
 - » Excepted benefit HRA (EBHRA)
 - » Individual coverage HRA (ICHRA) integrated with individual health insurance or Medicare

Expense Reimbursement

ONLY QUALIFIED EXPENSES FOR MEDICAL CARE DEFINED UNDER CODE §213(D)

- Employer may place limitations on reimbursable expenses (both as to the kinds of reimbursable expenses and as to whose expenses are reimbursable to the employee)
- Expenses cannot be reimbursed under another source or be paid with pre-tax dollars
- Expenses must be incurred during the coverage period
- Expenses incurred for self, spouse, children who have not reached age 27 by the end of the tax year and healthcare tax dependents

Examples:

- » Out-of-pocket expenses for medical care
- » Premiums for eligible health insurance
- » Long-term care insurance

HRA Nondiscrimination

Section 125

- Not applicable – HRAs cannot be offered under a cafeteria plan because no contributions by an employee

Section 105(h)

- Applicable to most HRAs as self-insured medical reimbursement plans
 - » Prohibit discrimination in favor of HCLs as to eligibility and benefits



Applicable Laws and Regulations

ERISA

- Most HRAs are employee welfare benefit plans subject to ERISA (unless governmental or church plan)
- Form 5500 – HRAs that are ERISA welfare benefit plans are subject to Form 5500 filing unless exception applies

Internal Revenue Code

- Must have written HRA plan document/SPD (includes non-ERISA HRAs)

COBRA

- HRAs are group health plans generally subject to COBRA

- » Qualified beneficiaries who lose HRA coverage due to qualifying event must be given the opportunity to continue HRA coverage for prescribed time period
- » COBRA required even when HRA offers spend-down feature

HIPAA

- HIPAA portability and privacy provisions generally apply
 - » Exception to portability and nondiscrimination provisions for HRAs that qualify as HIPAA excepted benefits
 - » Exception to privacy provisions if plan sponsor self-administers claims under the plan and there are fewer than 50 participants

How HSAs, FSAs and HRAs Impact Each Other



HSA Eligibility

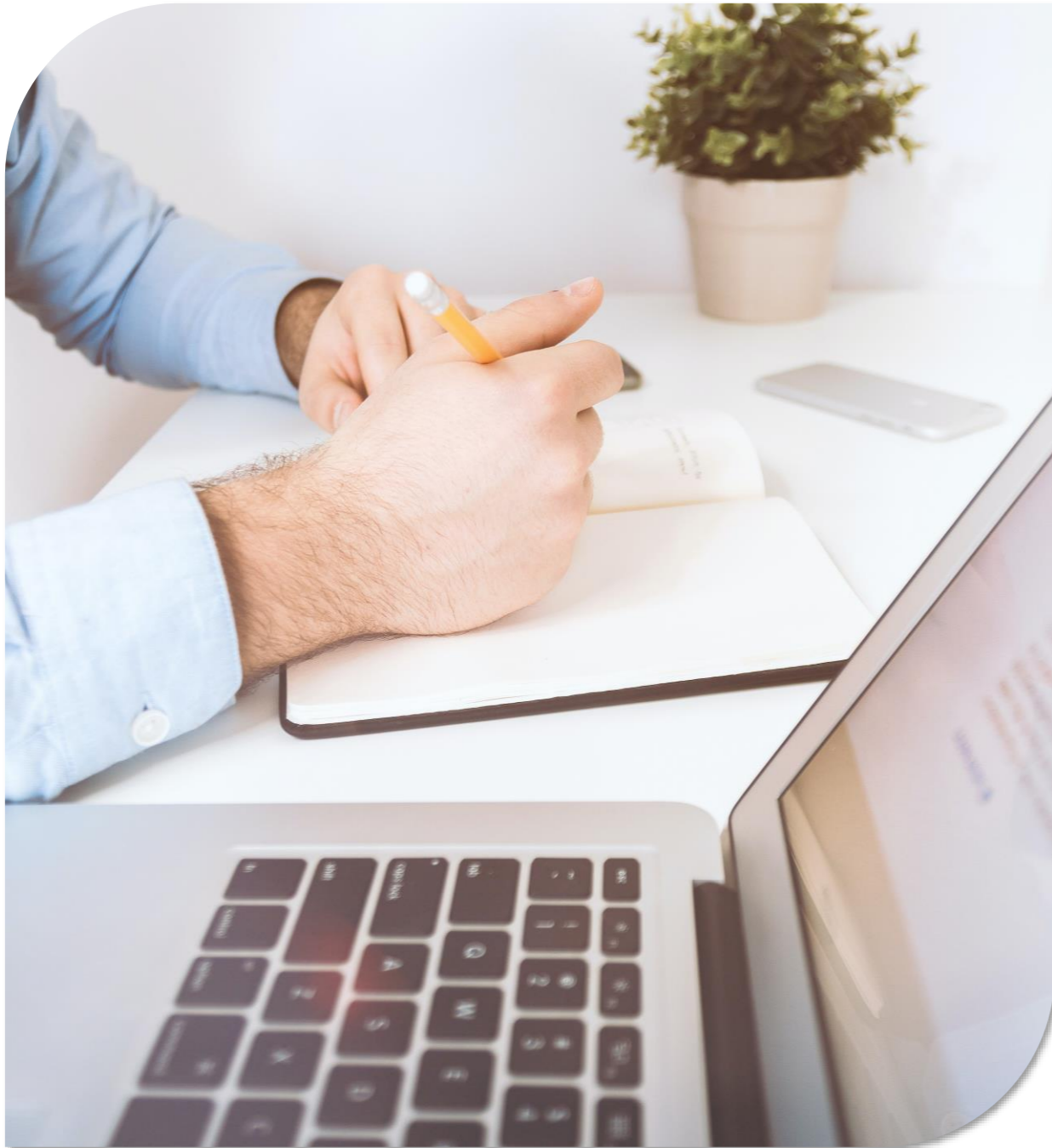
GENERAL-PURPOSE HEALTH FSA OR HRA COVERAGE WILL PREVENT HSA ELIGIBILITY

- Individuals whose medical care expenses can be paid or reimbursed under a general-purpose health FSA or HRA (e.g., employee's medical care is reimbursable under a spouse's general-purpose FSA/HRA) are not eligible for HSA contributions
- Ineligible for HSA contributions for entire period of coverage under health FSA or HRA

Specially Designed Health FSAs/HRAs Will Not Prevent HSA Eligibility

- Limited-purpose health FSA and HRA
- Suspended HRA
- Post-deductible health FSA or HRA
- Retirement HRA (will prevent HSA eligibility during retirement but not while employed)

Ordering Rules



Health FSA and HRA

- Health FSAs typically payers of last resort
- Claims generally submitted to HRA first, then health FSA reimburses any amounts not covered by the HRA
 - » Employers can draft HRA and health FSA plan documents so that an HRA pays only after the health FSA amounts are exhausted.

HSA

- HSA can reimburse any eligible expenses regardless of whether the individual is eligible to contribute to an HSA
- HSA cannot reimburse expenses that are already reimbursed from another source

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