IRS Notice 2008-59

EXPLANATION

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Introduction

The Internal Revenue Service (IRS) released IRS Notice 2008-59 on June 25, 2008. The notice provide guidance on HSAs in a number of areas. These include:

- Who is considered an eligible individual?
- What plans qualify as high deductible health plans?
- What are the limits for contributions?
- What types of expenses can be considered qualified medical expenses?
- What is a prohibited transaction?
- When is an HSA deemed established?
- How are HSA administration and maintenance fees treated?

The notice is provided in forty-two question and answer format. The following will review those aspects of HSA not covered in other guidance.

Who is considered an eligible individual?

An individual will still be eligible to participate in an HSA, if he or she:

1. participates in an HRA that just reimburses premiums for coverage under an accident and health plan and/or expenses for vision, dental and preventive care.

2. is covered by both a HDHP and a "mini-med" plan provides coverage for a fixed amount per day of hospitalization and/or coverage for expenses relating to the treatment of a specified list of diseases. An individual will still be eligible to contribution to an HSA, because these coverages are be considered "permitted coverages." An individual will not be eligible to participate in a HSA if the "mini-med" plan provides coverage for a fixed amount per office visit with a physician, a fix amount per out-of-patient treated at the hospital and a fixed amount per ambulance use.

3. participates in family coverage under an HDHP with an embedded individual deductible that is no less than the minimum family deductible for an HDHP for the calendar year ($2,200 for 2008 and $2,300, for 2009.

   Example: If an individual participates in an HDHP with a deductible under a family coverage of $3,500 (umbrella deductible) and had an embedded individual deductible of $2,200n he or she will be eligible to participate in an HSA.

4. participates in a FSA or HRA that reimburses expenses before HDHP pays expenses as long as the FSA or HRA reimburses after the minimum annual deductible for the year has been met by the individual.

5. received medical benefits from the VA more than three month ago. This three month requirement does not apply if the medical benefits are considered "permitted insurance" or preventive care.

6. has access to free health care or health care at charges below fair market value from an employer's on-site clinic if the clinic does not provide significant benefits in the nature of medical care. A clinic is not considered to be providing significant benefits if it provides the following benefits: (a) physicals and immunizations; (b) injecting antigens provided by employees (e.g., performing allergy injections); (c) a variety of aspirin and other nonprescription pain relievers and (d) treatment for injuries caused by accidents at the plant.

7. has family coverage that covers dependent and the dependents have other, disqualifying non-HDHP coverage.

What plans qualify as a High Deductible Health Plan?

1. A health plan will still be considered a High Deductible Health Plan, if it:

   a) takes in consideration expenses incurred which an individual had family coverage for determining if he or she satisfies the individual coverage deductible limit during the year if the individual switched coverage during the year. A health plan 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 individual coverage. In all cases, each expense must be allocated on a reasonable and consistent basis. and except in the case of COBRA coverage, each expense may be allocated to only one individual and the plan year must be twelve months.

   b) does not restrict benefits just to expenses for hospitalization or in-patient care. A plan must provided significant benefits to be an HDHP. If a plan only provides benefits for expenses for hospitalization or in-patient care and significant other benefits do not remain available under the plan, any expenses incurred by a covered individual after satisfying the deductible are treated as out-of-pocket expenses.

   c) imposes a separate or higher deductible for specific benefits and provides significant other benefits. Any amounts paid to satisfy a separate or higher deductible will not be treated as out-of-pocket expense. No expense incurred by a participant other than the general deductible is treated as an out-of-pocket expense.

2. In determining whether an individual has satisfied the deductable of the HDHP, only medical expense provided under Code Section 213(d) and covered by the plan will be taken into account.

What are the limits for contributions?

1. In determining the maximum annual HSA contribution limit for an individual with family coverage, the other coverages of the spouse and dependent children will not affect the limit. If the spouse has coverage that is not a HDHP, he or she will not be eligible to receive an HSA contribution, so all amounts must be contributed to the account of the spouse that only has HDHP coverage.

2 For a married couple, the maximum annual HSA contribution for any calendar year shall be the family limit ($5,800 for 2008 and $5,950) even if:

   a) one spouse has family HDHP coverage and the other spouse has individual HDHP coverage. This limit applies regardless of whether the family HDHP coverage includes the spouse with individual coverage.

   b) both spouses have family coverage and they do not cover each other.

3. If an individual is covered by an HDHP for the first part of a calendar year and then is covered by a non-HDHP plan for the remainder of the calendar year, he or she may still contribute for those months in which he or she was covered by an HDHP during the calendar year.

4. An individual participating in an HSA may rollover amounts to another HSA even when he or she is not eligible to make HSA contributions for the calendar year in which the rollover takes place.

5. If an employer makes contributions (including salary reduction contributions)to employees' HSA after December 31 of a calendar year following the calendar year in which the contribution relates, the employer must:

   a) inform the HSA trustee or custodian that the contribution relates to a prior year

   b) inform the employee of the designation and

   c) report such contributions in Box 12 with Code W on the employee's Form W-2 for the year in which the contributions are actually made.

6. If each spouse in a married couple is each eligible for catch-up contribution, each spouse must make the catch-up contribution to his or her own HSA. One spouse can make his or her catch-up contribution to the other spouse's HSA.

7. If an employer makes a contribution to an employee who was either never eligible to contribute to an HSA or was eligible but in excess of the maximum annual contribution limits for the calendar year, it may either:

a) request the financial institution to return the contribution; or

b) include such amounts as gross income and wages on the employee's Form W-2 for the year in which the employer made the contribution, if it. fails to request the contribution back by the end of calendar year

8. Employer contributions (including salary deferral contributions) to an HSA for an employee's spouse (who is not an employee) cannot be excluded from the employee's gross income.

What types of expenses can be considered qualified medical expenses?

1. An employer may provide use of a debit card in an HSA that restricts payment and reimbursement to health care if the funds in the HSA are otherwise readily available. This means that an individual must also be able to access the funds through online transfers, withdrawals from automatic teller machine or check writing. An employer must notify its employees that other access to HSA funds is available

2. If an HSA accountholder is age 65 or older, he or she can use HSA funds to pay premiums for Medicare Parts A, B and D for him or herself, his or her spouse or his or her dependents. These premiums are treated as qualified medical expenses.

3. If the accountholder is under age 65, Medicare premiums are not considered qualified medical expenses.

4. Premiums for COBRA coverage for a spouse or dependent of the HSA accountholder are considered qualified medical expense for HSA purposes.

5. Premiums for health coverage for a spouse or dependent during a period in which they are receiving unemployment compensation.

What is a prohibited transaction?

1. The following transactions will be considered a prohibited transaction under the Internal Revenue Code:

   a) If an HSA accountholder borrows funds from his or her HSA;

   b) If the HSA trustee of custodian lends money to the HSA.

   c) If an HSA accountholder pledges his or her HAS as security of a loan

2. If an HSA account holder engages in a prohibited transaction, the HSA stops being an HSA as of the first day of the taxable year of the prohibited transaction.

The assets of the HSA are deemed distributed and the appropriate taxes, including the 10 percent additional tax will apply.

3. If the employer sponsoring the HAS (or other disqualified person) is the party engaging in a prohibited transaction, then the employer (or the other party) is liable for the excise tax.

When is an HSA deemed established?

1. An HSA is deemed established when the trust or custodial account is deemed established under state law. Most state laws require that for a trust or custodial account to exist, the account must be funded. Some state laws require the accountholder's signature to establish the account.

2. An HSA funded by amounts rolled over or transferred form an Archer MSA or another HSA is deemed established as of the date the prior account was established.

3. If the HSA accountholder establishes an HSA and then later establishes another HSA, any later HSA is deemed established when the first HSA was established if the HSA accountholder has a balance greater than zero at any time during the 18 month period end on the date the later HSA is established.

How are HSA administration and maintenance fees treated?

Any administration and/or maintenance fees withdrawn by an HSA trustee or custodian are reflected on the Form 5498 in the fair market value at the end of the taxable year, but are not reported as distributions from an HSA accountholder's HSA.