Q&A from Assurex Global Webinar "HRA/HSA Compliance & Administration Issues"	July 28, 2016
Question	**Answer**
Are employee elections required every plan year like an FSA? Or are they continuous until the employee requests either a change in the amount or termination of the election?	Elections to pay for benefits on a pre-tax basis through a cafeteria plan are generally required for each plan year. However, the rules do permit rolling (or "evergreen") elections under which employees' elections would continue until such time as the employee either changes or terminates such elections.
Regarding non-student dependents over age 19; can funds from an HSA be used for their qualifying expenses?	For an HSA to reimburse the expenses of the child, the child must be a qualifying child or qualifying relative: 1. A "Qualifying Child" includes the employee's child or other relative younger than the employee; who has not attained age 19 (or 24 if a full-time student); who lives with the employee; who does not provide more than one-half of his or her own financial support; and who has not filed a joint return with the employee's spouse. The age limitations are waived for a qualifying child who is totally disabled. 2. A "Qualifying Relative" includes the employee's child or other relative or member of the employee's household for whom the employee provides over half of the individual's financial support, and who is not the qualifying child of the employee or other person. Note, this definition is a little different than a dependent for purposes of a health plan or health flexible spending account in that it does not extend to a child until the end of the year in which the child turns age 26.
Can an employee elect COBRA for the medical plan and NOT the HRA? Is there one rate for the medical plan and one rate for the HRA, and elect one separately from the other?	In most cases, it is possible to elect just the medical plan without also continuing the HRA. but the answer really depends upon the plan setup. COBRA contains rules regarding when an employer should allow separate elections and premium payments versus when the elections and payments can be combined. Unfortunately, those rules are a bit grey. Under the final IRS COBRA regulations, employers have some discretion in determining the number of group health plans that they maintain. Thus, if an employer provides a variety of health care benefits to employees, it generally may aggregate the benefits into a single group health plan or disaggregate benefits into separate group health plans for COBRA purposes. Generally, under the IRS COBRA regulations, all health care benefits provided by a single employer constitute one group health plan, unless— "it is clear from the instruments governing an arrangement or arrangements, to provide health care benefits that the benefits are being provided under separate plans; and the arrangement or arrangements are operated pursuant to such instruments as separate plans." In most cases employers combine the HDHP and HRA benefits into one COBRA plan for ease of administration, but the employer could choose to allow COBRA qualified beneficiaries to choose between the two (although most would prefer not to).

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Can an employee with Employee Only coverage contribute to a HSA to the full family amount?	No - the maximum HSA annual contribution is based on the level of coverage the individual has (in 2016, single - $3,350 and family - $6,750).
Can employer dollars reimburse employee premiums for individual or group health insurance?	Health insurance premiums are not considered to be a qualified medical expense, therefore unable to get reimbursed from an HSA, unless they fall under any one of the following: - continuation coverage under federal law (e.g., COBRA or USERRA coverage) for the HSA holder or for his or her spouse or dependents; - a qualified long-term care insurance contract; - any health plan maintained while the individual (i.e., the HSA holder or his or her spouse or dependent) is receiving unemployment compensation under federal or state law; or - for HSA holders age 65 or over (whether or not they are entitled to Medicare), any deductible health insurance (e.g., retiree medical coverage) other than a Medicare supplemental policy.
Can employers contribute different amounts in an HRA for different classes of employees?	Yes, subject to Section 105(h) nondiscrimination rules, which generally prohibit offering benefits in a way in which favors the highly compensated individuals.
Can you explain why an individual coming on mid-year is limited to contributing based on the months enrolled?	The annual maximum for HSA contributions is calculated on a monthly basis, generally based on the number of months in which an individual is enrolled in HDHP coverage and therefore eligible to contribute to an HSA. Therefore, if an individual is only enrolled in the HDHP and eligible to contribute to the HSA for 8 months out of the year, the individual may only contribute 8/12 of the annual maximum for the year unless the full contribution rule (or last month rule) applies. Under the “full contribution rule”, the individual is eligible to contribute the entire annual maximum (based on the HDHP coverage in effect on December 1st), as well as the full $1000 catch-up contribution if applicable, as if the individual had been eligible to contribute and enrolled in the HDHP the entire year so long as the individual remains eligible to contribute to an HSA for a thirteen month “testing period” that starts on December 1st and runs until December 31st of the following year.

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Can you have a HDHP with a HSA, and have a HRA to reduce the deductible on the HDHP?	In general, if an individual has other coverage available that reimburses medical expenses prior to the individual meeting the statutory minimum HDHP deductible (for 2016, $1,300 for self only coverage and $2,600 for family coverage), the individual would be disqualified from contributing to an HSA. So if the HRA is structured to reimburse qualifying medical expenses prior to reaching the HDHP deductible (i.e. $1,300 or $2,600), any individuals enrolled in the HRA would then typically be ineligible to contribute to an HSA. However, it is possible to have both an HRA and HSA simultaneously under two scenarios: 1. The HRA may be designed to pay or reimburse only those things not subject to the HDHP deductible (e.g., an HRA that covers vision, dental, and preventive care expenses on a first-dollar basis similar to a limited-purpose health FSA); or 2. The HRA may be designed so that it does not reimburse medical expenses until an individual has met their minimum HSA/HDHP deductible (a “post-deductible HRA”).
Can you offer different HRA dollar amounts for a single vs. family?	Yes
Does an HRA impact the "metal Level" of a 2-50 medical plan?	It depends upon how the HRA is structured… Employer contributions to an HRA sometimes affect minimum value and actuarial value of the plan depending on how the HRA funds can be used. Amounts newly made available (amounts contributed by the employer for the current plan year) that can be used only for cost-sharing will count for minimum value (MV) purposes (increasing the actuarial value of the plan). Cost-sharing generally includes deductibles, coinsurance and copayments, but does not include premiums. On the other hand, if the HRA contributions are not restricted solely to cost-sharing (but rather may be used to reimburse any medical expenses allowed under Section 213, including premiums), it would not count toward achieving minimum value, but would be considered when determining whether the coverage is affordable.
Does the maximum HSA annual contribution amount include any contributions the employer makes on the employees behalf?	Yes - all contributions made into the HSA are counted toward the annual maximum.

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Don't understand the comment that an embedded individual deductible can't be less than the family deductible. By definition, an embedded individual deductible IS less than the family deductible.	To qualify as an HDHP, the embedded individual deductible for family HDHP coverage cannot be less than $2600 (2016 single deductible). So: · If the family deductible is set at $2600, there really couldn't be an embedded individual deductible (or it would be the same - $2600) · If the family deductible is set at $6000, the embedded individual deductible could be $2600 or greater (anything between $2600 and $6000), but could not be anything less than $2600 Family deductible of $5000 with an embedded individual deductible of $3000 would be OKAY, while a family deductible of $5000 with an embedded individual deductible of $2500 would NOT be okay.
Employees who have supplemental plans through a spouse (not HFSA) - Can that employee also contribute to an HSA?	Maybe…it depends on the type of supplemental plan. In general, if the employee has coverage for significant medical care (other than preventive care) prior to meeting the HDHP deductible, whether through the employee's plan, through a spouse's plan, or elsewhere, the individual will not be eligible to contribute to an HSA. However, if the supplemental plan qualifies as a excepted benefits (such as a fixed dollars per day hospital reimbursement plan), the benefit would not disqualify the employee from making HSA contributions.
Hi - Can you restate the ineligibility regarding individuals who are "entitled" to Medicare vs "enrolled" in Medicare?	HSA-eligibility is not dependent upon a certain age (e.g. under 65), but those enrolled in Medicare are not eligible to contribute to an HSA. Medicare Part A enrollment is automatic for some individuals (i.e., those who are already receiving Social Security benefits when they turn 65); these individuals simultaneously become eligible, enrolled, and entitled. Other individuals become eligible for Medicare, but must file an application in order to become enrolled in benefits – for example, working individuals who have attained age 65 and are eligible to receive Social Security benefits but have not applied for them. Individuals enrolled in Medicare may enroll in an HDHP, but would not be able to make any HSA contributions. However, if an individual is only eligible but not entitled (i.e., both eligible and enrolled), they may still contribute to the HSA, assuming they are otherwise eligible to contribute, including any catch-up contributions.

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How do you offer an employee a cobra rate for HRA if the employer is funding it anyway?	It is correct that HRAs must be funded solely by employer contributions. However, if the employee and/or dependents choose to continue the HRA via COBRA, a premium may be charged for the monthly accrual to the HRA (in addition to the COBRA premium for the major medical coverage, if applicable). Like any other self-funded plan, the COBRA premium must be determined by using the actuarial method or the "past-cost" method to make a reasonable estimate of the cost of providing HRA coverage for similarly situated beneficiaries. The IRS has provided guidance in the form of a safe harbor as to the interpretation of the applicable premium definition as follows: "An HRA complies with the COBRA requirements for calculating the applicable premium under Code Section 4980B if the applicable premium is the same for qualified beneficiaries with different total reimbursement amounts available from the HRA (and otherwise also satisfies the requirements of Section 4980B)." Under the safe harbor, the COBRA applicable premium is "blended" so that it is the same for all HRA qualified beneficiaries, regardless of their account balances.
How does an employer show an offer of coverage if an employee does not complete an election form or sign a waiver of coverage?	§4980H rules do not set forth any particular process or documentation requirements outside of requiring that an opportunity is provided, at least annually, to accept or decline coverage. However, the employer will want to have something to prove that coverage was offered. A signed enrollment form/waiver form would provide a good method of proof, but there are certainly other options so long as the employer has a reasonable method to show that coverage was offered. Therefore, if the employer feels confident that the communication being provided is reaching all eligible employees and makes it clear how the eligible employees can obtain coverage, and the employer can provide proof of this communication, the employer should be okay.
How often can a HSA contribution be changed throughout the plan year?	§125 rules permit employees to prospectively start, stop, or otherwise change an election to make HSA contributions through pre-tax salary reductions under a cafeteria plan at any time during the plan year, so long as the change is effective before the salary to which the change applies becomes currently available to the employee. The cafeteria plan must be designed to allow election changes at least monthly.

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I received a notice for an employee that left the firm in February, and the wording of the notice made it sound like the individual was a current employee. Do we appeal in that case, only to clarify the date of termination, even though the individual would likely be eligible for the time period after termination?	There is something to appeal only if the employee was full-time and offered minimum value, affordable coverage for some months during 2016 (or the year the notice is received). If not, there is nothing to appeal. And even if there is something to appeal, the employer may or may not want to do so. Oftentimes an individual will fill out an application for coverage through a public Exchange prior to the beginning of the calendar year and therefore employer information at that time will be different than during the year. It is not necessary for an employer to clarify hire and termination dates or correct employment information in general. Keep in mind that potential penalties under §4980H are not dependent upon this process but rather will be handled via the employer reporting on Forms 1094-C and 1095-C. The appeal process with the Exchange is to verify whether or not individuals were eligible for employment-related minimum value, affordable coverage and ultimately whether or not the individuals should be eligible for a tax subsidy if choosing to enroll through a public Exchange.
I thought I heard it said that employees with HRAs or HSAs cannot continue their plans thru COBRA. This makes sense with an HRA an Employer reimbursements (which would stop of course). but with an HSA and a HD health plan, the health plan can at least continued under COBRA I would assume. I would also think that the employee contributions would probably not be allowed any longer, yes?.	HSAs are not group health plans subject to COBRA. Since HSAs are portable and move with the individual (the individual continues to have access to the funds indefinitely), there is no need to offer COBRA for the HSA. The HRA, on the other hand, is a group health plan subject to COBRA and generally access to the HRA ends when the individual is no longer eligible (e.g. termination of employment); therefore COBRA must be offered for the HRA and so long as the individual elects and pays the COBRA premium, the individual may continue to have access to the HRA for reimbursement of qualified medical expenses for the COBRA maximum coverage period.
If a subsidy is allowed, will the employer have to pay a penalty?	The employer may owe a §4980H penalty for any month that the employee was full-time and the employer failed to make a minimum value, affordable offer of coverage if the employee is enrolled through a public Exchange and receives a tax subsidy.
If HRA renewal is effective 12/1/16, does this new feature apply or is it for plans effective 1/1/17 +	So long as the HRA was in place prior to 2016, the new coordination rules allowing reimbursement of qualifying medical expenses only for those actually enrolled in the group health plan applies for plan years beginning on or after 2017. So for your example, the plan needs to be in compliance 12/1/17.
If you pay 100% for the coverage for the employee but only a portion for family members is the employee still available for a subsidy and can this impact an employer to receive a penalty?	Generally, if the coverage provides minimum value and the employee contribution is $0, the coverage will meet §4980H requirements and the employer would not face a penalty even if the employee has to contribute 100% to enroll family members. Affordability is based on the employee cost for single coverage.

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If, upon termination of employment, remaining amounts are forfeited, how is it then offered under COBRA?	It is true that generally upon a loss of eligibility for the HRA, remaining funds are forfeited (unless there is a spend-down feature); however, there is an exception for those who elect COBRA for the HRA. If an individual elects COBRA for the HRA and pays the required premium, the individual is eligible to submit qualified medical expenses for reimbursement through the maximum COBRA coverage period.
In defining a large employer, if several companies (each under 50 ees) have the same parent company then are each considered a small employer or are they considered all large because of the common ownership?	Entities are aggregated when counting full-time equivalents (FTEs) to determine "applicable large employer" status for the employer shared responsibility rules under §4980H; in other words, if together, the entities total more than 50 FTEs, then each entity is subject to the requirements under §4980H regardless of the size of each individual entity. However, keep in mind, actual compliance with the rules and any applicable penalties apply on an individual entity basis. Each entity is individually responsible for offering coverage to its full-time employees and facing potential penalties if it chooses not to. The penalty is applied on an individual basis to each entity rather than applying across the whole controlled group, except that the waiver (for purposes of calculating penalty 4980H(a)) is applied on a pro rata basis. In addition, each individual entity is required to report on such offers of coverage using Forms 1094-C and 1095-C.
Could you please clarify - Insurance premiums are generally reimbursable, but HRAs may not be used to pay for individual health insurance premiums?	Insurance premiums are considered qualified medical expenses generally reimbursable under an HRA (unlike under health FSAs). However, under health care reform rules, employers are prohibited for reimbursing employees for individual health insurance coverage, whether on a pre-tax or after-tax basis. It has been made clear via FAQ and several notices that any employer reimbursement of individual health coverage creates a group health plan which will fail to satisfy the health care reform requirements under the ACA and expose the employer to up to $100/day per affected individual.
Regarding HRA coordination rule, I thought it was that it the HRA can only be used to cover members on group coverage, so that the Spouse covered under another group plan would still qualify.	That is correct. In general, the coordination rule allows the HRA to be used to reimburse expenses of any family members who are enrolled in a group health plan that could be considered integrated with the HRA, which could be through the employer offering the HRA or through another employer (e.g. the employer of a spouse). However, this is a design issue that the employer will need to consider as the employer would not be required to consider integration with a plan other than the group medical plan offered by the employer.
So if we don't offer COBRA for our HRA as the employee is terminated, are we in non compliance? What repercussions might we get from not offering the HRA Cobra?	Yes. The risk here is the same as if you don't offer a regular health plan to someone who experiences a COBRA qualifying event.

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We are a small township with one FT employee for whom we set up an HRA account. We set pre-taxed funds in a non-interest bearing account. What are typical things to reimburse for? Are there requirements?	HRAs are generally available to reimburse medical expenses described in §213 so long as they are substantiated (e.g. receipts provided) and not already reimbursed elsewhere. However, the plan design could place further limits on allowed reimbursements.
We have a fully insured plan for our management and corporate level employees and separate fully insured plan to our restaurant, hourly employee. Under the plan for management & corporate, we reimburse the last $1,500 of the $3,500 annual single deductible and last $3,000 of the $7,000 family deductible. We do not reimburse any of the deductible under the plan offered to our hourly, restaurant employees. Is this a problem?	Assuming the reimbursements are being provided via an HRA, which is considered a self-funded group health plan, §105 nondiscrimination rules would apply. §105h rules prohibit offering benefits in a way that favors highly compensated individuals. With the suggested structure, there is likely a discrimination issue. It would be advisable to perform discrimination testing and may be necessary to change this structure to avoid violating §105h requirements.
We may be over thinking it but how does the OOP max apply if Out of Network?	For purposes of meeting the definition of an HDHP, out of network expenses do not have to count toward the out of pocket (OOP maximum). A network plan will not fail to be a qualified HDHP solely because the out-of-pocket limitation for services provided outside the network exceeds the maximum out-of-pocket limitation allowed for HSA purposes, so long as the plan otherwise meets the requirements of an HDHP.
Where can we find the notice that we are required to give to new hires?	Here is a link to the notice - https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/notice-of-coverage-options
What about if a child is covered through Medicaid as secondary to the parents insurance? Can employee still have HSA. Child covered due to a disability.	The spouse's (or dependent's) Medicare entitlement/enrollment (and resulting HSA-ineligibility) does not impact the employee's ability to maintain and contribute to an HSA. In other words, the employee is still eligible to contribute based on the HDHP coverage enrolled in (single or family) regardless of whether a spouse or dependent may be ineligible to contribute to an HSA (e.g. due to Medicare enrollment). And regardless of whether a person is eligible to contribute to the HSA or not, any funds in the HSA continue to be available to reimburse qualified medical expenses for the account holder and any tax dependents (including the spouse).
What happens if you receive a notice from someone that is a temporary/contractor worker but listed you as the employer. Do you still need to appeal?	So long as the employer is confident that the individual has been properly labeled as an independent contractor (and should not be treated as an employee), the employer has no obligation under §4980H rules to make an offer of coverage. However, regardless of whether there is a requirement to make an offer or not, an appeal is only appropriate if the employer actually made a minimum value, affordable offer of coverage that would affect subsidy eligibility. If no offer was made, there is nothing to appeal.

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What is our liability as an organization with the HSA? If an employee over-contributes, can we be held responsible? If our organization is making a contribution, does that change our liability?	The employer is not responsible for determining an individual's maximum annual contribution limit. Employers are only responsible for determining the following with respect to an employee's eligibility and maximum annual contribution limit on HSA contributions: (1) whether the employee is covered under an HDHP (and the deductible) or low deductible health plan or plans (including health FSAs and HRAs) sponsored by that employer; and (2) the employee's age (for catch-up contributions). If excess contributions are made, it is ultimately the HSA account holder who would be responsible for taxes and any potential penalties on such amounts. However, if the employer knows what the maximum contribution should be, it could be a payroll tax issue. Since the employer will treat employer contributions as tax free payments, and employee contribution as pre-tax dedications to pay, the employer will end up making incorrect payroll tax payments which could result in the employer owing back taxes, penalties, and interest.
What is the difference between an individual deductible and an embedded individual deductible?	When an individual enrolls in single HDHP coverage, there is a deductible (which for 2016 cannot be less than $1300) which must be met before the plan may cover any medical expenses other than for preventive or permitted care. Similarly, for those who enroll in something other than single HDHP coverage (e.g. family HDHP), there is typically a higher deductible (which for 2016 cannot be less than $2600) which must first be met. For other than single HDHP coverage (e.g. family HDHP), the plan may be designed either to require the full family deductible to be met before coverage is provided or may be designed to provide coverage on an individual basis to any family member who meets a lower threshold before the full family deductible is met. For example, if the family deductible is $5000, and the embedded individual deductible under the family HDHP is $3000, any individual family member who reaches $3000 in expenses would then be eligible for additional coverage, whether at 100% or subject to cost-sharing even if the $5000 deductible has not yet been met. And so long as the embedded individual deductible is not less than the annual family deductible requirement for HDHP coverage ($2600 in 2016), the plan would still meet the definition of an HDHP because coverage is not being provided prior to the $2600 threshold being met.
Would an employee be eligible for a HSA if their spouse enrolls in a FSA with their firm?	Generally, no. If an individual is eligible for reimbursement under a general purpose health FSA (as opposed to a limited purpose or post-deductible health FSA), the individual loses eligibility to contribute to an HSA and may not make any contributions. This is true whether the individual is eligible under their own employer's health FSA or that of a spouse (unless the spouse's health FSA limits expense reimbursements to employees only, which is unlikely). The individual will generally not be eligible to contribute to an HSA so long as the individual or the individual's spouse is enrolled in a health FSA.

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Do the discrimination rules apply to HSA accounts? Can an employer contribute different amounts for different groups of employees?	If the employer contributions are made outside the cafeteria plan, they are subject to the comparability rules, which generally require uniform contributions to those who are eligible (can differentiate between different tiers of coverage – e.g. single and family). If the employer contributions are made through a cafeteria plan, there is more flexibility in regard to differentiating contributions, but the employer contributions would be subject to Section 125 nondiscrimination rules, which generally prohibit favoring the highly compensated employees.
After coming off an HDHP and still having funds in an HSA can you only reimburse for expenses incurred during the time you were enrolled on the HDHP / HSA health plan?	No. Regardless of whether a person is eligible to contribute to the HSA or not, any funds in the HSA continue to be available to reimburse qualified medical expenses for the account holder and any tax dependents (including the spouse). Eligibility for the HSA simply determines whether or not additional contributions may be made to the account.
Are employees allowed to change their contribution to an HSA mid year as long as they don't exceed the annual limit?	If employee HSA contributions are made through a cafeteria plan, on a pre-tax basis, §125 rules permit employees to prospectively start, stop, or otherwise change an election to make HSA contributions through pre-tax salary reductions under a cafeteria plan at any time during the plan year, so long as the change is effective before the salary to which the change applies becomes currently available to the employee. The rules require that the employer must allow HSA election changes at least monthly.
For comparability HSA contributions, can you make different contributions for temporary FT versus permanent FT employees?	Generally, no. There are three separate categories of non-collectively bargained comparable participating employees for comparability testing: - Current full-time employees - Current part-time employees - Former employees These three employee categories are the exclusive employee categories for comparability testing. No other employee categories are permitted, so an employer may not set up other employee categories (e.g., salaried/hourly, exempt/non-exempt, management/non-management) for comparability testing purposes.
Can the December enrollee also contribute for 2017 in addition to the full amount contributed in December of 2016?	Yes. If the individual is eligible to contribute to an HSA as of Dec. 1, 2016 and remains eligible through Dec. 31, 2017, the individual may contribute the annual maximum for both 2016 and 2017.