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Summary Comparison: HSAs, FSAs, and HRAs

Provision	Health Savings Accounts (HSAs)	Health Care Flexible Spending Accounts (FSAs)	Health Reimbursement Arrangements (HRAs)
Overview	An individual tax-exempt trust or custodial account created to pay for the qualified medical expenses.	An employer-sponsored benefit program under which employees receive reimbursement for qualified medical expenses.	An employer funded account that reimburses employees for qualified medical expenses. Several types of HRAs are permitted: (1) Stand-alone HRAs that provide only certain excepted benefits; (2) HRAs integrated with minimum value group health coverage; (3) HRAs integrated with group health coverage that is minimum essential coverage, but does not provide minimum value; (4) Retiree-only HRAs; (5) HRAs integrated with individual health insurance (ICHRA); and (6) Excepted benefit HRAs (EBHRA).



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Who is eligible to set up an account?	<p>Individuals covered only under a <i>qualified high-deductible health</i> plan. Individual must not be covered under a health plan that is not a qualified high-deductible plan. Certain “excepted” plans are permissible (e.g., dental and vision).</p> <p>Eligibility not limited to employees; former employees, self-employed may also be eligible (including more than 2% shareholders, subchapter S-corporations, partners in a partnership, and sole-proprietors).</p>	An employee whose employer offers a health care FSA option. ¹	<p>An employer may establish and contribute to an HRA that is not a QSEHRA for an employee or former employee who is enrolled in a group health plan or individual health insurance that provides minimum essential coverage.</p> <p>A small employer that is not an applicable large employer as defined by ACA (generally under 50 employees) that does not offer a group health plan to any employee may establish a Qualified Small Employer Health Reimbursement Arrangement (QSEHRA) for eligible employees.</p> <p>The QSEHRA must be provided to all eligible employees that are not excludable. Employees who may be excluded are those with less than 90 days of service, under age 25, part-time and seasonal employees, employees covered under a bargaining agreement if health benefits were the subject of bargaining, and certain non-resident aliens.</p>
What are the requirements for	<p><i>Qualified high-deductible health plan:</i></p> <p>Self-only deductible must be at least the statutory minimum of \$1,400 for 2020 with</p>	<p>No health plan requirements.</p> <p>Note: although the employee is not required to be covered under</p>	An HRA may be integrated with group medical that is minimum essential coverage using one of two permitted integration methods. Stand-alone HRAs that are not QSEHRAs will not

¹ Although former employees may have an FSA, the overwhelming majority of employers offer an FSA only to active employees because an FSA for a former employee can only be funded by the employer. There is no mechanism for former employees to contribute funds to an FSA on a pre-tax basis.



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the corresponding health plan?	<p>an out-of-pocket maximum of not more than statutory maximum of \$6,900 for 2020;</p> <p>Family deductible must be at least the statutory minimum of \$2,800 for 2020 with an out-of-pocket maximum of not more than statutory maximum of \$13,800 for 2020.</p> <p>Plan may provide first-dollar coverage of certain preventive care.</p> <p>For network plans, maximum out-of-pocket amounts may apply only to in-network services with higher amount permitted out-of-network.</p>	<p>another medical plan, the employee must be eligible for another medical plan sponsored by the employer in order for the FSA to qualify as an “excepted benefit” not subject to ACA.</p>	<p>comply with ACA, unless the HRA reimburses only HIPAA excepted benefits, is a retiree-only HRA, is an ICHRA, or is an EBHRA.</p> <p>An employer may not establish a QSEHRA if it provides group health coverage to any employee.</p> <p>For an ICHRA, The employer must not offer a traditional group health plan to the same employees it offers an ICHRA. It may offer a plan that covers only excepted benefits (other than health FSA).</p> <p>For an EBHRA, the employer must offer a separate group health plan, other than an account-based plan or a plan consisting solely of excepted benefits to EBRHA eligible employees.</p>
Do the uniform coverage and 12-month election rules apply to the account?	<p>Not for the HSA. Cafeteria plan election rules apply to the high deductible health plan if by pre-tax salary reduction contributions by the employee.</p>	<p>Yes.</p>	<p>Not for the HRA. Cafeteria plan election rules apply to the group health plan that is integrated with the HRA if the group health plan is funded by pre-tax salary reduction.</p>
Who may contribute to the account?	<p>Anyone. Generally it will be the account holder (including via salary reduction) or the employer or both.</p>	<p>The employee, employer, or both. Usually funded by employees via salary reduction.</p>	<p>Solely the employer.</p>



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What are the limits on contributions?	<p>Up to the statutory maximum for the calendar year.</p> <p>For 2020 plan years:</p> <p>Single coverage - \$3,550</p> <p>Family coverage - \$7,100</p> <p>Catch-up (age 55+) - \$1,000</p> <p>These amounts (except the catch up) are index annually and are expected to increase in future years.</p>	<p>For plan years beginning on/after January 1, 2020 - \$2,750 for employee contributions. This amount indexes annual and is expected to increase in future years.</p>	<p>No federal income tax law limits unless the HRA is a QSEHRA. Employers typically set limits, often equal to or less than the amount of the deductible under the employees' health plan.</p> <p>The 2020 annual limits for QSEHRAs are:</p> <p>Single coverage - \$5,250</p> <p>Family coverage - \$10,600</p> <p>QSEHRA annual limits are determined by statute and will be indexed annually and are expected to increase in future years.</p> <p>For an ICHRA, no federal income tax law limits. Employers may set limits.</p> <p>For an EBHRA, \$1,800 (indexed after 2020).</p>
What are qualified medical expenses?	<p>Unreimbursed qualified medical expenses as defined in Section 213(d) of the Internal Revenue Code, e.g., amounts paid for doctors' fees, medicines, dental and vision expenses, and necessary medical services not paid for by insurance or health plan.</p> <p>HSA funds generally cannot be used to pay health insurance premiums; however, there are certain exceptions. See below</p>	<p>Unreimbursed qualified medical expenses as defined in Section 213(d) of the Internal Revenue Code: e.g., amounts paid for doctors' fees, medicines, dental and vision expenses, and necessary medical services not paid for by insurance or health plan.</p> <p>Health FSA funds cannot be used to pay health insurance premiums.</p>	<p>Unreimbursed qualified medical expenses as defined in Section 213(d) of the Internal Revenue Code. An HRA that is integrated with a group medical plan that does not provide minimum value may only reimburse limited expenses such as deductibles, coinsurance, copayments, and excepted benefits. May be used to pay the employee contribution for the group health plan that is integrated with the HRA if the HRA is not a QSEHRA. Employee may not be given a</p>

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	<p>“When can funds be used to pay health insurance premiums?”</p>		<p>choice between paying required contributions from the HRA or via salary reduction.</p> <p>A QSEHRA may reimburse individual health insurance premiums.</p> <p>An ICHRA may reimburse any Section 213(d) medical expense, including individual health insurance or Medicare premiums. It may not be used to reimburse group health plan premiums, except COBRA coverage.</p> <p>An EBHRA may be used to reimburse any Section 213(d) medical expense. It may not be used to reimburse individual coverage premiums (except for coverage for excepted benefits only or Short Term Limited Duration coverage), group health insurance or coverage (except COBRA), or Medicare.</p>
<p>What are the claim substantiation and adjudication requirements?</p>	<p>Claim substantiation by a third party is not required; however the individual HSA owner must maintain the records substantiating their claims.</p> <p>Plan is self-adjudicated by account owner submitting only eligible claims or reporting the taxable distribution.</p>	<p>Claim substantiation and adjudication (other than by the employee) is required.</p>	<p>Claim substantiation and adjudication (other than by the employee) is required.</p> <p>Additionally for an ICHRA, the plan must require substantiation of enrollment in individual medical coverage annually and with each reimbursement request. May be by third party documentation or employee attestation.</p>

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<p>When can funds be used to pay health insurance premiums?</p>	<ol style="list-style-type: none"> 1. While receiving unemployment benefits (state or federal) 2. While covered under federal COBRA continuation 3. Retiree medical contributions (or premiums) for retirees 65 and older (Medigap premiums not qualified) 	<p>Health care FSAs cannot be used to pay insurance premiums of any kind.</p>	<p>Funds in an HRA that is not a QSEHRA, ICHRA, or EBHRA can be used to pay for premiums under:</p> <ol style="list-style-type: none"> 1. The employee’s group health plan, if integrated (if no pre-tax payment through employer’s cafeteria plan available) 2. A spouse’s group health plan, if integrated 3. The employer’s retiree health plan contribution 4. COBRA continuation coverage <p>Funds in a QSEHRA may be used to pay for individual health insurance premiums.</p> <p>An ICHRA may be used to pay individual health insurance or Medicare premiums. It may not be used to reimburse group health plan premiums, except COBRA coverage.</p> <p>An EBHRA may be used to reimburse premiums for coverage solely for excepted benefits, Short Term Limited Duration coverage, or for COBRA premiums. May not be used to reimburse individual coverage premiums, group health insurance coverage, or Medicare.</p>

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Can funds be used to pay for long-term care coverage?	Yes, premiums for qualified long-term care insurance are reimbursable up to the dollar limits specified in IRC 213(d).	No, the Internal Revenue Code specifically excludes long term care insurance as a qualified benefit under a cafeteria plan; so long term care insurance premiums are not reimbursable under an FSA.	Yes, premiums for long-term care insurance are reimbursable up to the dollar limits specified in IRC 213(d).
Are withdrawals for non-medical expenses allowed?	Yes, but distributions not used exclusively to pay “qualified medical expenses” are included in income and are subject to a 20 percent additional tax. The 20% penalty does not apply: <ul style="list-style-type: none"> • At the death of the individual the ownership of the account can be transferred to the spouse – otherwise the HSA ceases to be an HSA and is included in the gross income of the beneficiary or the individual's estate. • If the distribution is made after the account holder attains age 65, or • If the distribution is made after the account holder becomes disabled as defined in IRC Section 72(m)(7). 	No.	No.
Can an employer or trustee limit the type of expenses	No.	Yes. The plan may define covered expenses.	Yes. The plan may define covered expenses.



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that may be reimbursed?			
What is the tax treatment of contributions?	<p>Employer contributions (including salary reduction amounts) are excludable from gross income and not subject to federal employment taxes (e.g., FIT, FICA).</p> <p>Employee contributions are tax deductible on Form 1040 if made on an after-tax basis.</p>	<p>Employees pay no federal, Social Security or (in most states) state taxes on FSA contributions.</p> <p>Employers pay no FICA tax on FSA contributions.</p>	<p>Employer contributions are generally excludable from employee's gross income and not subject to federal employment taxes (e.g., FIT, FICA).</p>
Can funds be carried over from one year to the next?	<p>Yes. Funds may be carried over indefinitely during a participant's lifetime.</p> <p>Upon a participant's death, an HSA may be passed on to a surviving spouse without federal tax liability.</p>	<p>Unused FSA balances are generally forfeited at the end of the year.</p> <p>Employer may include up to a 2.5 month grace period at the end of the year, or as an alternative the plan may allow for a \$500 carryover.</p>	<p>Yes. Unused amounts in an HRA may be carried over, subject to any limits set by the employer.</p> <p>Unused amounts in a QSEHRA may be carried forward and count toward the annual statutory dollar limit on reimbursements from the QSEHRA.</p> <p>For an EBHRA, amounts carried over from one year to the next are disregarded for purposes of the annual limit.</p>
Are accounts portable?	<p>Yes. The account is owned by the account holder. Employee account holders continue to have access to the account when they leave or change jobs.</p>	<p>No. Unused FSA balances are forfeited if the employee leaves or changes jobs. (Except as permitted by COBRA or a plan's grace period or carryover provision.)</p>	<p>Yes, for an HRA that is not a QSEHRA, but only at discretion of the employer.</p> <p>A QSEHRA is not portable.</p>

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			An HRA that is not a QSEHRA or an EBHRA must contain a provision permitting the employee (or retiree) to opt out.
Does interest accrue on funds deposited in the account?	Yes. Interest accrues tax free. Earnings are tax free if used for qualified medical expenses.	No. Interest is not accrued.	There is no requirement that interest accrue. However, employers have discretion to credit interest to the HRA accounts funded through a VEBA. Where applicable, earnings are tax free if used for qualified medical expenses.
Do 105(h) nondiscrimination rules apply?	<p>The HSA is not subject to the nondiscrimination requirements under Section 105. The underlying high deductible health plan will be subject to the nondiscrimination requirements under Section 105(h) if it is self-insured.²</p> <p>However, employer contributions made outside a cafeteria plan - “Comparable” contributions - are subject to a separate nondiscrimination requirement. In general, employer contributions must be either the same dollar amount or the same percentage of the deductible for all participating employees who are HSA eligible.</p> <p>If employee contributions to an HSA are made through a Section 125 cafeteria plan,</p>	Yes. Cafeteria plan nondiscrimination requirements under Section 125 also apply.	<p>Yes. If self-insured, an HRA that is not a QSEHRA is subject to the 105(h) nondiscrimination requirements.²</p> <p>The underlying group medical plan may be subject to additional nondiscrimination requirements – Section 105(h) if self-insured² and Section 125 if part of a cafeteria plan. (Note: The HRA may not be included in a cafeteria plan.)</p> <p>A QSEHRA must be provided to all employees other than those that are excludable under Section 105 (h) (using 90 days as a maximum service requirement) and that the benefits be made available on the same terms to all eligible employees. Differences in benefits are permitted only to</p>

² Fully insured plans will be subject to ACA nondiscrimination requirements “similar” to the Section 105(h) requirements once the IRS issues regulatory guidance. Guidance has not been issued as of January 2020.



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	employer contributions are subject to the Section 125 nondiscrimination rules, <u>not</u> the comparability rule.		the extent that there is a difference in price for individual health insurance based on age and/or family size.

The intent of this analysis is to provide general information regarding the provisions of current federal laws and regulation. It does not necessarily fully address all your organization's specific issues. It should not be construed as, nor is it intended to provide, legal advice. Your organization's general counsel or an attorney who specializes in this practice area should address questions regarding specific issues.