



INFINISOURCE

COMPARISON OF HEALTH FSAs/HRAs/HSAs

Plan Design or Compliance Issues	Health FSAs	HRAs	HSAs
Internal Revenue Code			
High Deductible Health Plan (“HDHP”) requirements	None.	None.	HDHP must be established on the first day of the month for the individual to be eligible to make a contribution for that month.
Contribution limits	None, unless plan design imposes one. Limit recommended to comply with non-discrimination rules.	None, unless plan design imposes one.	1/12 th x lesser of deductible or, for 2006, \$2,700 (individual)/\$5,450 (family). See Notice 2004-50, Q/A 28-35 regarding special rules on the calculation of the limit. See Notice 2005-8 regarding contributions to a partner’s HSA and to a 2%-or-greater shareholder’s HSA. Catch-up contributions are also permissible for those who attain 55 during the calendar year.
Salary reduction funding	Permitted.	Not permitted for HRA, but permitted for HDHC.	Permitted for both HSA and HDHP. Also, the HSA may be funded with deductible (after-tax) employee contributions.
Employee Assistance Plan (EAP)	Permitted, without a limit.	Permitted, without a limit.	Permitted if it does not provide significant benefits and is not considered a health plan.

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Carryover of unused amounts	Not permitted, unless plan allows up to a 2½ month “grace period” to submit claims under IRS Notice 2005-42.	Permitted.	Required.
Medical expenses that are eligible for reimbursement	Otherwise unreimbursed Code § 213(d) medical expenses incurred during the coverage period. Cannot reimburse insurance premiums. Cannot reimburse qualified long-term care services.	Otherwise unreimbursed Code § 213 (d) medical expenses incurred while coverage in effect, including premiums for eligible health insurance and long-term care insurance.	Otherwise unreimbursed Code § 213(d) medical expenses incurred while coverage in effect, but not for expenses for insurance other than premiums for COBRA, qualified long-term care contract, or for a health plan while the individual is: 1. receiving unemployment compensation, or 2. over age 65 (other than a Medicare supplement policy).
Preventive care coverage	Permitted.	Permitted.	The HDHP may cover only preventive care permitted by statute or guidance. See Notices 2004-23 and 2004-50.

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Cash-outs of unused amounts (if no medical expenses)	Not permitted.	Not permitted.	Permitted, but such amounts are taxable and also subject to a 10% excise tax, unless disabled, who die or over age 65.
12-month period of coverage & prohibition of midyear changes	Applies.	Does not apply.	Applies to HDHP if funded through cafeteria plan. Participants may change HSA election at any time as long as it is prospective.
Uniform coverage requirement	Applies-i.e., maximum amount of coverage must be available throughout coverage period (generally 12 months).	Does not apply – (i.e., coverage level may be prorated by plan design).	Does not apply, but unused amounts belong to participant after termination.
Ability to spend down unused amounts after termination of active participation	Cannot use unused amounts to pay for claims incurred after termination; but COBRA rights may apply.	HRA can permit unused amounts to be used until depleted to pay for claims incurred after termination; and COBRA rights will apply too.	Applies, unused amounts belong to individual.
Claims must be incurred during current period of coverage	Yes, unless plan permits grace period.	No, claims incurred in current period of coverage may be paid in later plan year.	No, claims incurred in current period of coverage may be paid in later plan year. However, claim must be incurred after HSA is established.
Claims substantiation	Employer requirement.	Employer requirement.	Employee requirement.
Claims adjudication	Employer requirement.	Employer requirement.	Employee requirement.

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Ordering rules	HRA 1 st ; unless otherwise specified.	HRA 1 st ; unless otherwise specified.	HRAs/FSAs precluded, unless they are post-deductible or limited purpose.
Code § 105(h) nondiscrimination requirement	Applies.	Applies.	Applies to employer contributions made through cafeteria plan. Otherwise, employer contributions must be comparable (same dollar amount or percentage of deductible) for similarly situated participants, based on coverage category (employee only/family) or employment status (full-time, part-time, former).
Is a trust account required?	No, not by the IRC, but possibly by ERISA (no trust if health FSA complies with ERISA Tech. Rel. 92-01, including that reimbursements are made directly out of the general assets of the employer).	No, not by the Code, but possibly by ERISA (no trust if HRA reimbursements are made directly out of the general assets of the employer).	Yes.
Are account earnings taxable?	Not applicable if reimbursements are made directly out of the general assets of the employer. If funded with a VEBA, earnings are generally not taxable.	Not applicable if reimbursements are made directly out of the general assets of the employer. If funded with a VEBA, earnings are generally not taxable.	No, as long as there is a qualified HSA trust (see rules regarding cash out amounts).
ERISA (for ERISA-covered employers)	Applies.	Applies.	Does not apply, unless employer “involved” in plan under DOL Assistance Bulletin 2004-1.

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Funding requirement	Not required. There is not any requirement to set funds aside in a separate account; if an employer does so; ERISA's trust requirement may apply.	Not required. Employers may decide to fund (i.e., set aside funds) as potential liability increases. But any such funding may invoke ERISA's trust requirement.	Employer and employee HSA contributions require establishment of trust.
ERISA Form 5500	Applies. Exception for small (fewer than 100 participants) unfunded plan.	Applies. Exception for small (fewer than 100 participants) unfunded plan.	Does not apply unless it is an ERISA plan.
ERISA SPD and other disclosures, and adherence to ERISA's benefit claims procedures	Required.	Required.	Does not apply unless it is an ERISA plan..
HIPAA			
Portability, certificates of creditable coverage, and health status nondiscrimination	Applies. Exception for most health FSAs funded with salary reductions.	Applies. Health FSA exception generally not available.	Does not apply unless it is an ERISA plan.

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Privacy	Applies.	Applies.	Does not apply unless it is an ERISA plan.
COBRA	Applies. There is a special rule for qualifying health FSAs.	Applies. Special rule for qualifying health FSAs generally not available.	Does not apply unless it is an ERISA plan. Applies to HDHP.