



The Seminar Series

Legislative Update

**Presented by:
Karen L. Kirkpatrick**



The Seminar Series

The “Ins & Outs” of Consumer Driven Health Care

What do **EMPLOYEES** want?

- The EPFE Plan
 - Employer
 - Pays
 - For
 - Everything
- <Plan>**

“Alphabet Soup”

- Consultant 2007
 - FSA (Flexible Spending Account)
 - Employer/salary reduction-funded reimbursement account
 - Claims adjudication required
 - Use-it-or-lose-it rule applies (no carry over)
 - Uniform coverage requirement

“Alphabet Soup”

- Consultant 2007
 - HRA (Health Reimbursement Arrangement)
 - IRS Rev. Rul. 2002-41, IRS Notice 2002-45
 - Employer-funded account with carry over
 - No employee pre-tax contributions
 - No uniform coverage requirement

“Alphabet Soup”

- Consultant 2007
 - HSA (Health Savings Account)
 - Section 223 of Tax Code
 - Tax-advantaged IRA-like trust with carry over
 - Employer/salary reduction and/or employee funded
 - No uniform coverage requirement

Origin of HSAs

- Medicare Prescription Drug Improvement and Modernization Act of 2003 Medicare Bill creates new Code Section 223
 - Code Sec. 223 sets forth rules for HAS
 - Effective January 1, 2004

HSA Key Elements

- Eligible Individual
- Qualified High Deductible Plan
- Preventive Care
- Permitted Insurance
- Permitted Coverage
- Qualified Trust
- Qualified Trustee
- Comparability Rule
- Monthly Limits
- Special Rule
- Excess Contributions

Define “Eligible Individual”

- Any individual who satisfies four conditions on the first day of a month
 - Condition 1: Covered under a qualifying “HDHP”
 - Condition 2: Not also covered under a non-HDHP that covers the same benefits as the HDHP except for “Permitted Coverage” and/or “Permitted Insurance”
 - Condition 3: Cannot be claimed on another’s tax return as a dependent
 - Condition 4: Not “entitled” to Medicare
 - Eligible vs. Entitled

What is a “HDHP”?

- Any health plan (insured or self-insured) that satisfies the following:
 - Annual deductible satisfies statutory minimum:
 - At least \$1,100 for single coverage
 - At least \$2,200 for family coverage
 - “HDHP” does not cover anything below the deductible except Preventive Care, Permitted Coverage, and/or Permitted Insurance

What is a “HDHP”?

- HDHP requirements (cont.)
 - Out-of-pocket expense maximums (including the deductible) do not exceed the following:
 - \$5,500 single coverage/ \$11,000 family coverage
 - What is the effect of this rule on lifetime and annual maximums? Caps or Benefits?
 - **Out of network maximums disregarded**

Other Non-HDHP

- Statutory rule:
 - Individual cannot have other non-high deductible health coverage that covers the same benefits as the HDHP except for “permitted insurance” or “permitted coverage”
 - Presumably, other non-HDHP could also cover preventive care.
- Obviously, this rule affects coverage under Health FSAs and/or HRAs

Employee Contributions

- Employee contributions are deductible (above the line) if:
 - Made by Eligible Individual or anyone else
- Employees may contribute on a pre-tax basis under the Employer's cafeteria plan (if the employer allows)

New HSA Contribution Limits

- Before, HSA contributions were:
 - Limited to lesser of statutory limit or HDHP deductible
 - Prorated on monthly, not annual, basis
- Now, HSA contributions are:
 - Based solely on statutory limit
 - Calculated solely on annual basis
- TRHCA eliminates confusing rules related to:
 - Married couples with two HDHPs
 - HDHPs with carryover deductibles
 - HDHPs with embedded deductibles
 - Prorated catch-up contributions

New HSA Contribution Limits

- Employee A starts HDHP with \$1,100 deductible on April 1, 2007
 - Before: 2007 max = $1/12 \times 9 \times \$1,100 = \825
 - Now: 2007 max = \$2,850 (2007 statutory max)
- Employee B and spouse C have HDHPs with family deductibles of \$2,500 & \$3,000, respectively
 - Before: 2007 combined max = \$2,500
 - Now: 2007 combined max = \$5,650 (2007 statutory max)
- Catch up contributions for individuals age 55 and older is \$800 for 2007

HSA Rollovers

- Before, balances were:
 - Suspended or lost for health reimbursement arrangements (HRAs) during HSA participation
 - Lost for health flexible spending arrangements (FSAs) during HSA participation
 - Exception: post-deductible or limited purpose FSAs/HRAs
- Now, HRAs/FSAs can allow onetime rollovers, lesser of:
 - September 21, 2006, balance
 - Balance at time of rollover
 - Employer-permitted amount

HSA Rollovers

- Key rules:
 - Employers must transfer HRA/FSA funds directly to HSA before January 1, 2012
 - Employees must continue HDHP coverage for 12 months or else taxable and subject to penalty, unless due to death or disability

HSA Rollovers

- HRA/FSA rollovers must be made available to all employees
- IRA rollovers:
 - Onetime rollover now also permitted but counts toward annual contribution max
 - IRA trustee must transfer funds directly to HSA
 - Exception: first rollover was during self-only HDHP coverage, second rollover permitted during family HDHP coverage
 - Employees must continue HDHP coverage for 12 months or else taxable and subject to penalty, unless due to death or disability

Employer Comparable Contributions

- Before, employer contributions outside of cafeteria plan must be comparable to ALL employees (same amount or percent of deductible)
- Now, employer contributions may favor non-highly compensated employees (non-HCEs) over highly compensated employees (HCEs)
- Recommendation: greater flexibility exists if employers permit employee contributions through cafeteria plan (i.e., comparability rules do not apply)

HSA ERISA Information

- Field Assistance Bulletin (FAB) 2006-02:
 - Clarifies how to avoid ERISA application to HSAs
 - Builds on prior guidance in FAB 2004-01
- Employers may not:
 - Receive a discount on another product offered by HSA provider in exchange for HSA participation
 - Fail to promptly transfer participants' HSA contributions deducted from paychecks
 - Provide HSA line of credit: participants borrow from or pledge HSA assets to receive a benefit
 - Endorse HSA provider or program

ERISA cont.

- Employers may:
 - Open HSA for employee and deposit employer funds
 - Limit HSA providers who can market HSAs in workplace
 - Provide general information on using HSA with an HDHP
 - Select HSA provider that mirrors 401(k) investment options
 - Reap FICA/FUTA savings for Section 125 plan contributions

FSA, HRA and HSA

- Plan Combinations
 - FSA only
 - FSA with HDHP
 - FSA and HRA with HDHP
 - HRA only
 - HRA with HDHP
 - HSA with HDHP
 - HSA with HDHP and HRA
 - HSA with HDHP and FSA
 - HSA with HDHP and HRA and FSA

What is a Flexible Spending Account?

- A Flexible Spending Account allows you to put aside your hard earned money to pay for medical and dependent care expenses **TAX-FREE**
- Reimbursements are tax-free—**YOU NEVER PAY TAX ON THIS MONEY!**
This equates to an average savings of 30%

Health FSA Eligible Expenses

Family Health Care Expenses, including:

- Deductibles, office visit co-pays
- Dental expenses (including orthodontia)
- Vision expenses (exams, RX glasses, contact lens, contact lens solutions, laser eye surgery)
- OTC Drugs for medical care
- Prescription drug co-pays

Dependent Care FSA

- Expenses you pay so that you can work
- If married, your spouse must be working or a full-time student
- Children under age 13
- Dependent must live with you

FSA Advantages

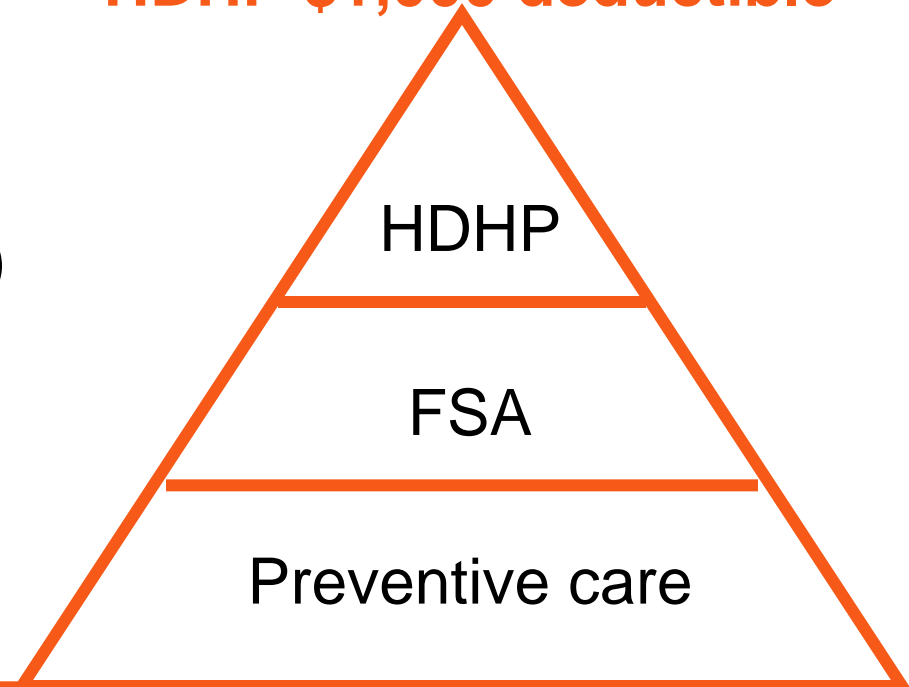
(MORE TO COME ON HOW FSAs WORK WITH HRAs)

- Increases take home pay for employees
- Decrease payroll taxes for both employee and employer
- Makes participants more aware of their spending habits in healthcare
- Encourages the use of preventive care

FSA with HDHP

- Deductible must be exhausted before HDHP pays (less first dollar coverage)

HDHP \$1,000 deductible



FSA Grace Periods

- Before, existence of FSA grace period delayed start of HSA participation, regardless of account balance
- Now, participants may start HSAs during grace period if:
 - No remaining balance on last day of plan year, or
 - Complete roll over of FSA balance to HSA

HRA

- June 26, 2002
 - IRS/Treasury Department
 - Revenue Ruling 2002-41
 - IRS Notice 2002-45

HRA Only

- Tax-free dollars are set aside by the employer for reimbursement of incurred Section 213(d) expenses and OTC drugs

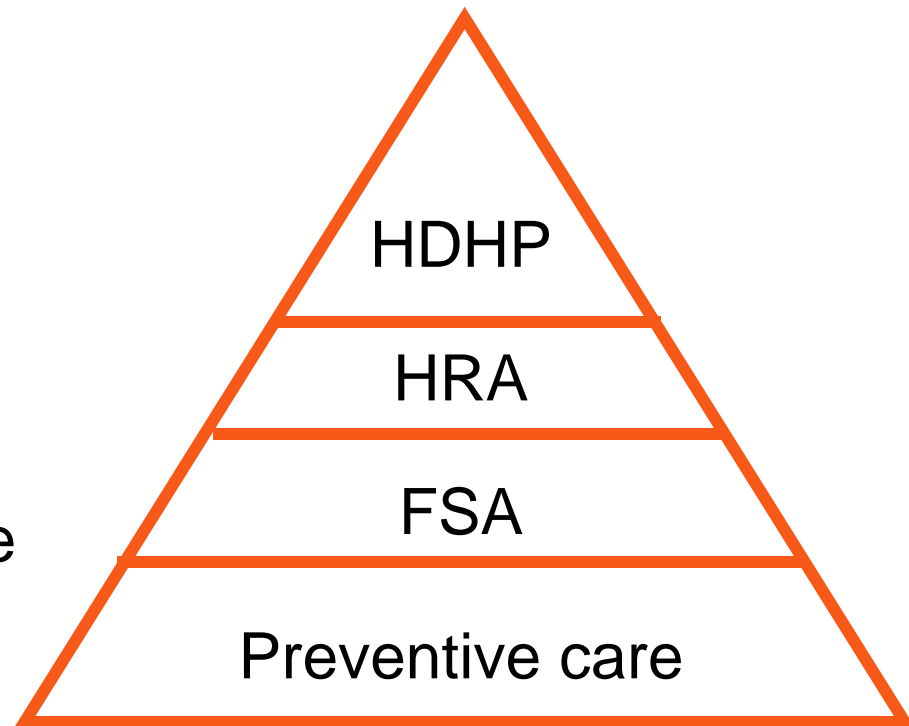
Who funds the HRA?

- The employer
- The employer
- The employer
- The employer

FSA and HRA with HDHP

HDHP \$2,000 Deductible

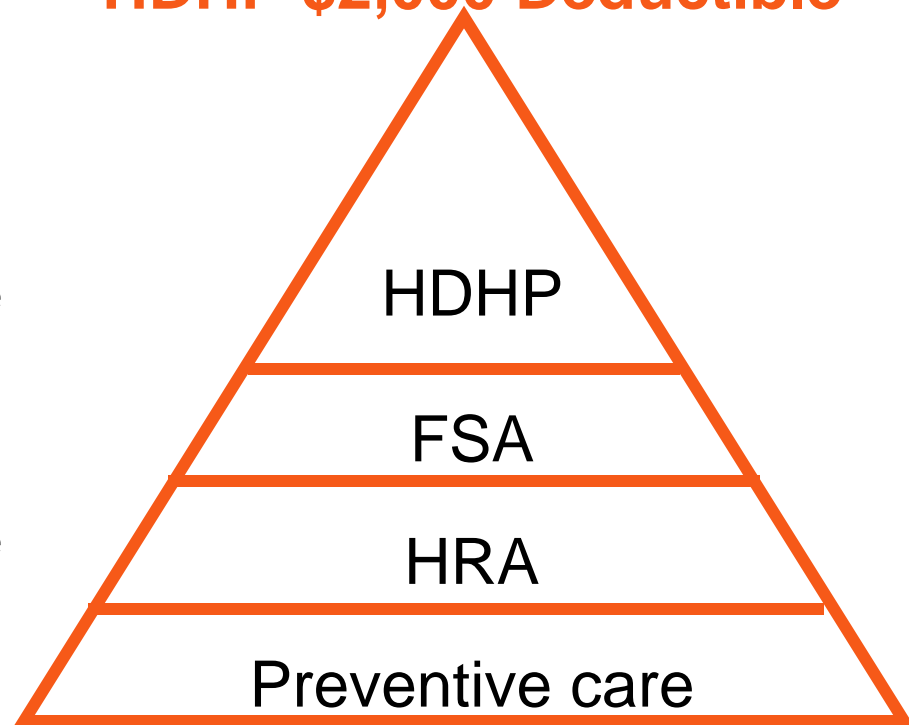
- Plan Design
 - FSA dollars used toward employee deductible
 - HRA dollars used after required employee deductible is satisfied



FSA and HRA with HDHP

- Plan Design
 - HRA dollars used for the first \$1,000 employee deductible
 - FSA dollars used for the second \$1,000 employee deductible

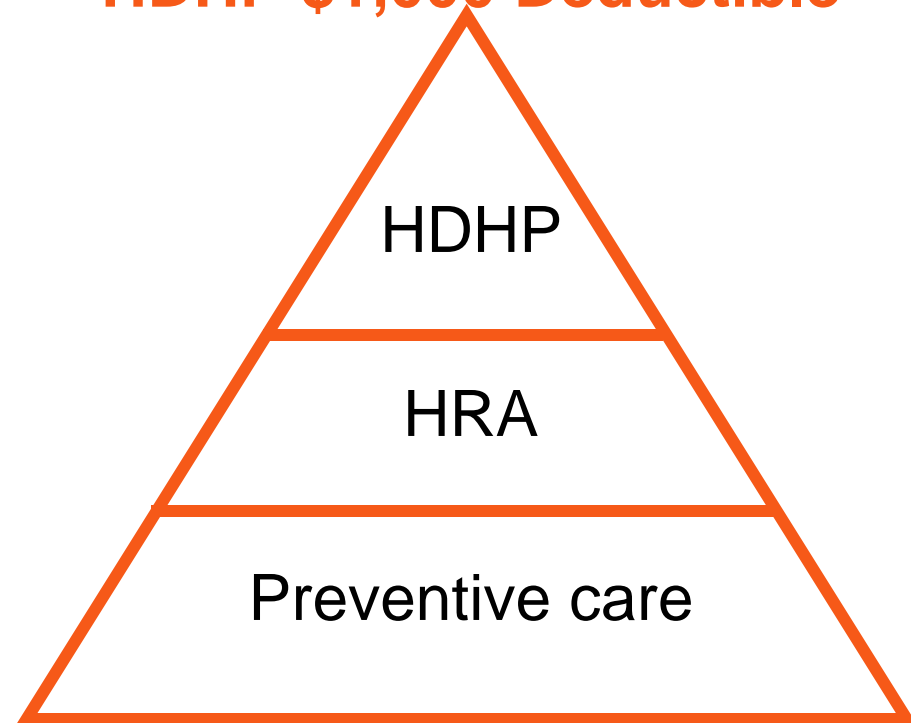
HDHP \$2,000 Deductible



HRA with HDHP

- HRA dollars are exhausted before HDHP is used

HDHP \$1,000 Deductible

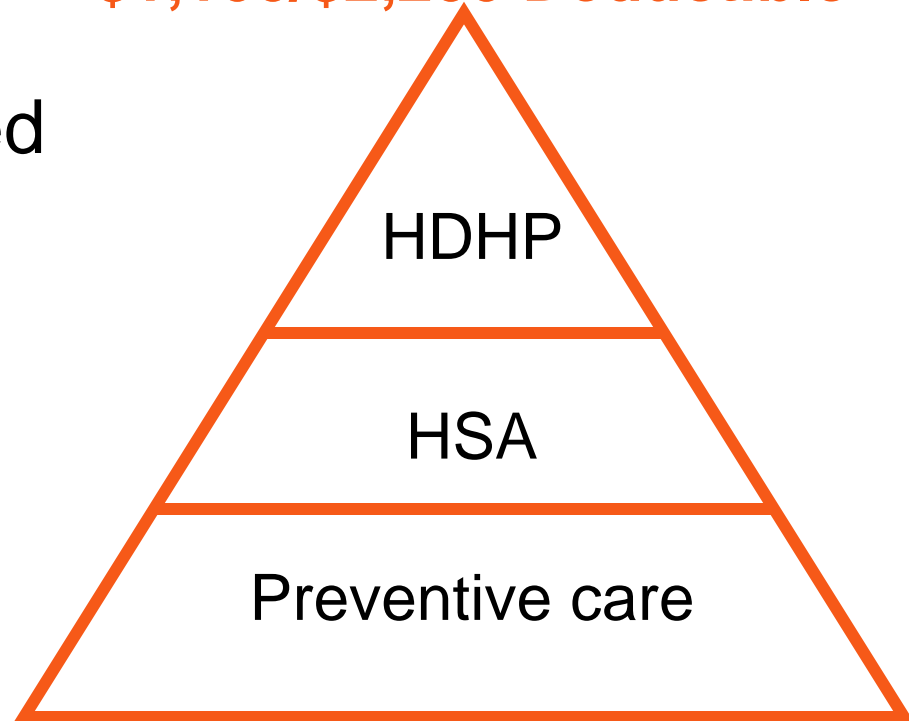


HSA with HDHP

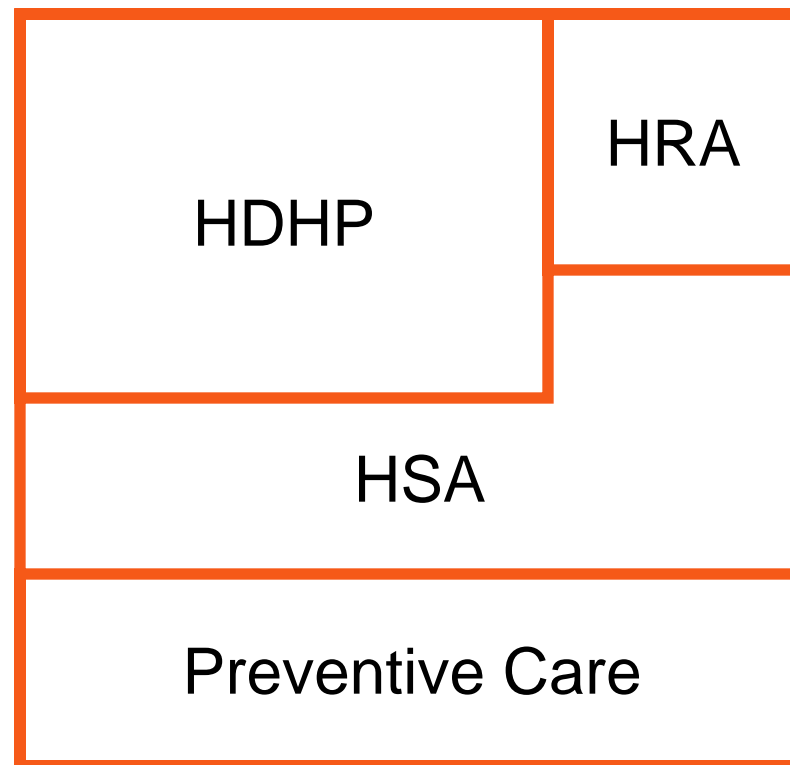
HDHP

\$1,100/\$2,200 Deductible

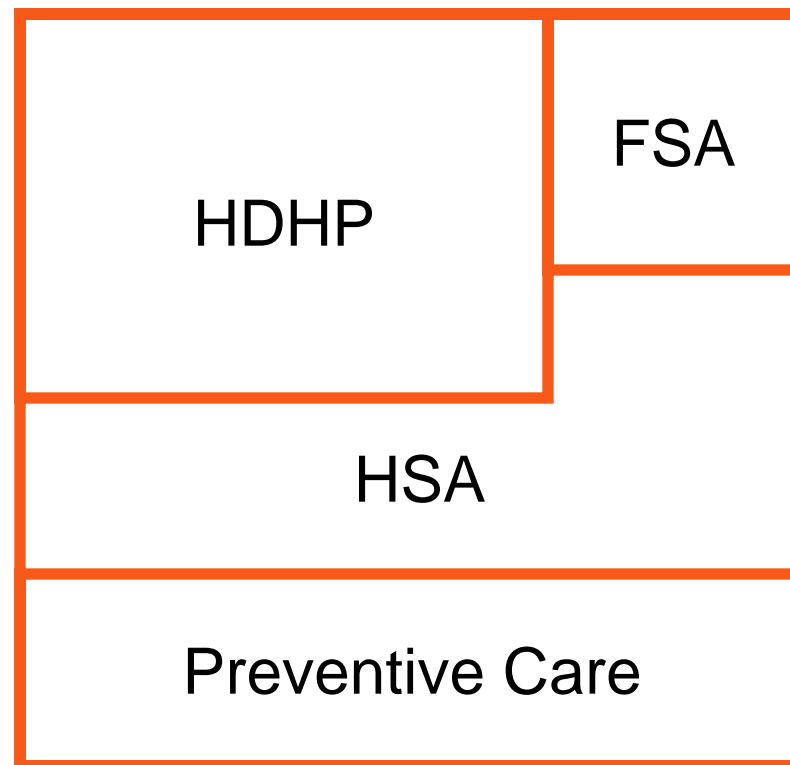
- Employer implements qualified HDHP with first dollar preventive care



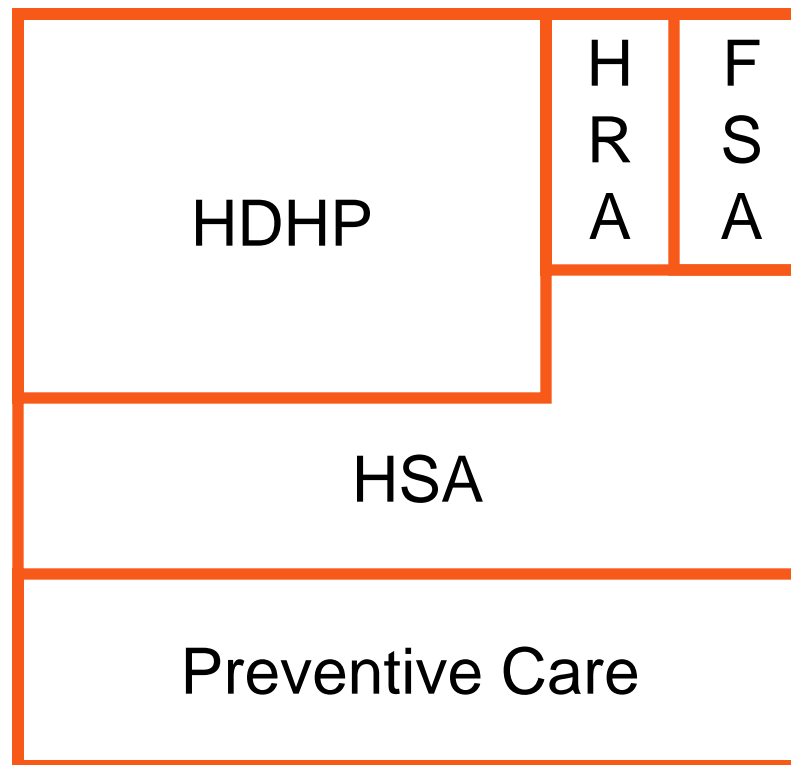
HSA with HDHP and HRA



HSA with HDHP and FSA



HSA with HDHP + FSA + HRA



Alphabet Soup Made Easy

Plan Type	EE Contribution	ER Contribution	Use it or lose it	Carry-over	EE owns forever
FSA	X	X	X	Limited grace period	
HRA		X		X	
HSA	X	X		X	X

HIPAA Portability

- New notices
- Certificates of Creditable Coverage
- Special Enrollment



The Seminar Series

HIPAA Security

Key Privacy/Security Rules

- PHI and EPHI: What are they?
- Who has PHI and EPHI at your facility?
- Disclosure of PHI in three major circumstances:
 - Treatment
 - Payment
 - Health care operations

Key Privacy/Security Rules (cont.)

- Security Concerns: Reporting form
- Limited access to facilities
- Protection from malicious software
- Need for unique user IDs and passwords
- Access to EPHI on need-to-know basis
- Encryption and Password protection of EPHI
- Business Associate Agreements
- Security Reminders

Recent and Current Developments

- HIPAA criminal actions
- Notable security breaches
- Recent guidance on remote devices
- April 14, 2007 deadline for HIPAA Notice of Privacy Practices



The Seminar Series

FMLA

Overview: the FMLA Landscape

- Family and Medical Leave Act became law in 1993
- Regulatory authority rests with ...
 - Department of Labor's Employment Standards Administration, Wage and Hour Division
- DOL issued Final FMLA Regulations in 1995
- IRS issued rules on FMLA's effect on 125 plans in 2001
- Proposed joint rules on FMLA and HIPAA issued in 2004
- Private right of action includes:
 - Personal liability for individuals
 - Lost wages and benefits, liquidated damages, attorney fees, costs
- Up to 12 weeks leave in 12-month period
- Employee must provide notice of foreseeable leave

Hot Button Issue #1: Eligibility

- Employers:
 - 50 or more employees for at least 20 weeks in prior or current calendar year
 - Includes joint employees, part-time, those on leave
 - Excludes layoffs, employment starts after first day of week or ends before last day of week
 - Continues until less than 50 for 20 or more weeks in prior or current year
 - Applies to integrated employers
- Employees:
 - 12 months of work (not necessarily consecutive)
 - 1,250 hours worked
 - Employed at worksite with 50 or more employees in 75-mile radius

Hot Button Issue #1: Eligibility (cont.)

- Employee must need leave:
 - For childbirth/care for newborn
 - For adoption/foster care placement of child
 - To care for own serious health condition
 - To care for immediate family with serious health condition

Hot Button Issue #2: Benefits (During Leave)

- Group health plan benefits must continue on same conditions as if no leave occurred
- Employees are entitled to:
 - Any changes/new health plans during leave
 - Non-health benefits if allowed under similar leave policies
- Employer may require:
 - Employees to pay share of premiums, but must provide notice as to how
 - Payment within 30 days of due date or cancellation
 - Recovery of unpaid premiums upon failure to return unless:
 - Serious health condition persists
 - Circumstances beyond control
- Benefits must be restored upon return to work

Hot Button Issue #2: Benefits (125 Plans)

- Employees may:
 - Revoke coverage/cease payments if leave is unpaid
 - Have same payment options as non-FMLA participants
 - Continue to have available full FSA election amount as long as coverage continues
 - Reduce FSA election upon reinstatement
- Employers may:
 - Allow these payment options:
 - Pre-payment
 - Pay-as-you-go
 - Catch-up
 - Not allow pre-payment of premiums beyond current plan year

Hot Button Issue #2: Benefits (COBRA/HIPAA)

- COBRA rules:
 - Taking FMLA leave is not COBRA qualifying event (QE)
 - QE occurs on last day of FMLA leave if not returning
 - COBRA coverage based on day before FMLA leave began
 - No COBRA requirement if plan terminates during FMLA leave
 - Must offer COBRA even if lapse of coverage occurs during FMLA leave
 - Cannot condition COBRA on repayment of unpaid premiums during leave
- HIPAA rule when coverage terminates during FMLA:
 - Must issue Certificates of Creditable Coverage
 - Does not count as significant break in coverage
 - Special enrollment period begins when FMLA leave ends, based on loss of eligibility

Hot Button Issue #3: Serious Health Conditions

- Two categories for serious health condition:
 - In-patient care
 - Continuing treatment by health care provider:
 - Period of incapacity of more than three days with treatment
 - Pregnancy or prenatal care
 - Chronic health conditions (e.g., asthma, diabetes)
 - Incapacity requiring continuing supervision (e.g., Alzheimer's)
 - To receive multiple treatments from health care provider (e.g., chemotherapy)
- Continuing treatment includes time for exams to determine whether medical condition exists
- Health care provider broadly defined
- Can require certification

Hot Button Issue #4: Medical Certifications

- Permissible for serious health conditions
- Employer must:
 - Provide written notice of requirement
 - Make specific request each time
 - Allow at least 15 days for employee to provide
 - Permit reasonable opportunity to cure any deficiencies
- Certification must present medical reasons justifying absence
- Employer may get second opinion (and third opinion if first two opinions differ), at employer's expense

Hot Button Issue #5: Intermittent Leaves

- Employee must show intermittent leave is medically necessary
- Employer may:
 - Assign employee to alternative position with equivalent pay/benefits
 - Deduct from pay, even if position is exempt
 - Agree to intermittent leave in other situations (e.g., after childbirth)
- Leave may be in increments as small as time-keeping system allows



The Seminar Series

A Call to Duty

The Final USERRA Regulations
& Their Impact on Employers & Others

Introduction

- Timeline
 - Enacted in 1994 to protect civilian employment of those in uniformed services
 - Proposed Regulations issued in 2003
 - VBIA enacted in Dec. 2004, extending benefits from 18 to 24 months for leaves starting on or after Dec. 10, 2004
 - Final Regulations issued in Dec. 2005, effective Jan. 18, 2006
- Applies to all employers
 - YES: churches, government, Indian tribes, hiring halls, pension plans, TPAs, insurance carriers, managers, successors in interest, joint employers
 - NO: ministerial functions, independent contractors
- Interplay with Internal Revenue Code clarified
- Enforced by VETS (DOL agency)

Rights, Benefits, Obligations: Health Plans

- Must offer existing health coverage during leave, for up to 24 months
- No COBRA mandates on election, payment, termination but employer may adopt “reasonable” requirements/ procedures/rules
- With reasonable procedures, plans may cancel coverage if:
 - No advance notice from employee & no election
 - Employee gives advance notice but makes no election
 - Employee gives advance notice, elects & pays untimely
- Right to reinstatement on return
- Special rules for health benefits account systems (“hour banks”)

Rights, Benefits, Obligations: Other

- Entitled to non-seniority benefits during leave
- Accrual of vacation leave is a non-seniority benefit
- May use accrued vacation during leave
- May restrict use of sick leave unless use is permitted for “any reason”
- Must be treated the same as others who are similarly situated

Enforcement & Remedies

- Two options
 - File complaint with VETS (with possible referral to Attorney General)
 - File private lawsuit
- Necessary parties: employers & potential employers
- Remedies
 - Compliance with USERRA
 - Compensation for lost wages/benefits
 - Liquidated damages for willful violations
 - Attorney fees, expert fees, other litigation expenses
- Generally, no statute of limitations

Anti-Discrimination/Retaliation

- Applies to status & activity
- Broad scope for discrimination prohibition:
 - Hiring, employment, reemployment, retention, promotion, benefits
- Broad scope for retaliation prohibition:
 - Enforcement actions, testimony, proceedings, investigations, exercise of any right
- Employee must show discrimination/retaliation was motivating factor
- Employer must show action would have been taken anyway absent protected status/activity

Reemployment Eligibility

- 4-Factor Eligibility Test
 - Advance notice to employer (30 days suggested)
 - 5 years or less of service during current employment
 - Timely return/application for reemployment
 - No disqualifying discharge
- Applicable jobs:
 - YES: temporary, part-time, probationary, seasonal
 - NO: brief, nonrecurrent period with no reasonable expectation employment would continue
- No intent to return required

Reemployment Eligibility (cont.)

- Included:
 - Military fitness examinations, funeral honors duty, NDMS, some National Guard, some ROTC, PHS Corps
- Excluded:
 - NOAA, Civil Air Patrol, Coast Guard Auxiliary
- Additional time between employment & service
- Advance notice may be verbal or written, may be excused by military necessity
- Upon return, employee must apply within timeframes:
 - < 31 days leave: first available work period
 - 31-180 days leave: 14 days
 - >180 days leave: 90 days
 - Hospitalization: 2 years
- Moonlighting OK if not prohibited

Reemployment Eligibility (cont.)

- May require documentation on return
- No reemployment obligation for dishonorable discharge & other similar reasons
- Employers' affirmative defenses
 - Changed circumstances make it impossible or unreasonable (e.g., reduction in force)
 - Employment was for brief, nonrecurrent period with no reasonable expectation it would continue
 - Undue hardship on employer

Reemployment Rights & Benefits

- “Prompt” reemployment
- “Escalator” position, including seniority, status, pay, promotion & benefits based on a “reasonable certainty”
- “Escalator” principle applies to disabled persons
- Reasonable efforts required to qualify for position
- Termination protection, except for cause
- Pension plan protections (401(k)s and DB plans)

New Employer Notice

- Original notice requirement effective on Mar. 10, 2005
- Two posters:
 - Federal employees (identifying OSC's role)
 - Private & state employees
- NDMS inclusion
- More contact information

Action Plan for Employers

- Develop reasonable requirements for health plan election, payment & termination
- Clarify how to handle months 19-24
- Check for PCE for service-related injuries
- Review new-hire practices
- Review handbook provisions
 - Leaves of absence/returns from leaves of absence
 - Terminations for cause
 - Moonlighting policies
- Educate management on USERRA
- Review FSA practices
- Replace USERRA notice

Action Plan for Agents

- Familiarize yourself with major provisions
- Discuss USERRA with employers, particularly handling of health plan continuation
- Assist with handling of months 19-24 where appropriate
- Beware of involvement in benefits administration matters

Medicare

- Part D
 - Notice requirements
 - Timeframes
 - Penalties



Contact Infinisource

For information on employee benefits administration and compliance issues, visit www.benefitsolved.com or call 800-300-3838.

COBRA, Consumer Driven Health Care, HIPAA Portability & Privacy, Agency Management System, Retiree Billing