

**CHOOSING A NEW HEALTH PLAN DESIGN?  
DIFFERENCES AMONG HRAs, HSAs AND FSAs  
BEYOND THE BASICS AND AFTER THE  
FIRST WAVES OF GUIDANCE**

**American Health Lawyers Association Annual Meeting**

**"The Hunt for Red ERISA: Essential Concerns"**

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**Caveat:** This chart summarizes some of the differences between (1) a health reimbursement account under Revenue Ruling 2002-41, 2002-2 C.B. 75, and Notice 2002-45, 2002-2 C.B. 93 ("HRA"), (2) a health savings account under section 223 of the Internal Revenue Code of 1986, as amended ("Code"), and principally, Notice 2004-2, 2004-2 I.R.B. 269 (January 12, 2004) ("HSA") and (3) a health plan that is a flexible spending arrangement under sections 105 and 106 of the Code and Proposed Treasury Regulation section 1.125-2, Q&A-7. No one should rely on this chart as legal advice. In every situation, the application of the rules requires careful analysis by a counsel who is familiar with your particular situation.

This chart summarizes some of the guidance issued through May 20, 2004 and related issues. It is not intended to cover all issues, but only to consider how other laws may interact with the various arrangements.

<b>Feature</b>	<b>HRA (Rev. Rul. 2002-41 and Notice 2002-45)</b>	<b>HSA (Code § 223, Notice 2004-2, Rev. Rul. 2004-38, Rev. Rul. 2004-45, Rev. Proc. 2004-22, Notice 2004- 23, Notice 2004-25 and Field Assistance Bulletin 2004-1)</b>	<b>FSA (Code §§ 105, 106 and Proposed Treasury Regulation § 1.125-2)</b>
1. Is a High Deductible Health Plan ("HDHP") required?	No	Yes	No
2. Is the arrangement an employer-sponsored plan subject to ERISA?	Yes	The determination of whether the arrangement is an employer-sponsored plan subject to ERISA will dictate the answer to many later questions. Under Field Assistance Bulletin 2004-1, <sup>1</sup> an HSA can avoid being an employee welfare plan under ERISA if there is no employer, or if there is an employer involved, the employer does not contribute to it, employee participation is voluntary, no employer endorsement is made and	Yes

<sup>1</sup> April 7, 2004.

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		<p>the employer is paid only reasonable payroll deduction expenses.</p> <p>An HSA with employer contributions may avoid being an ERISA plan so long as the employee's establishment of the HSA is completely voluntary, and the employer does not (1) limit the ability of the eligible employees to move funds to another HSA other than as restricted by the Code, (2) impose conditions on using HSA funds beyond those imposed by the Code, (3) make or influence the investment decisions with respect to funds contributed to the HSA, (4) represent the HSA is an employee welfare benefit plan established or maintained by the employer, or (5) receive any payment or compensation in connection with the HSA.</p>	

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		<p>Conditions on contributions that are required to satisfy the Code's requirements are okay. The employer may limit its activity to forwarding of contributions through its payroll to one HSA provider (or a limited number of providers), as long as the employer does not restrict the employee's ability to move funds to another HSA beyond the Code's restrictions.<sup>2</sup></p> <p>Imposing plan design type restrictions (e.g., limiting reimbursements to co-pays, deductibles and co-insurance for items covered by the HDHP) on uses of HSA funds may take the HSA outside of the parameters of Field Assistance Bulletin 2004-1.</p>	

<sup>2</sup> Field Assistance Bulletin 2004-1. However, Field Assistance Bulletin 2004-1 makes it clear that the HSA's status as an employee welfare benefit plan under ERISA does not affect whether the accompanying high deductible health plan, if sponsored by the employer, is an employee welfare benefit plan as a group health plan.

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3. Is it a group health plan under the Code?	Yes. It also must be an accident or health plan under sections 105 and 106 of the Code.	It depends – are there contributions by an employer or an employee organization? If not, it is not a group health plan under Code section 5000(b)(1). It is not required to be an accident or health plan under Code sections 105 and 106.	Yes. It also must be an accident or health plan under sections 105 and 106 of the Code.
4. Is employer involvement required?	Yes	No	Yes
5. Is there a stated dollar contribution limit?	No	Yes. Employer contributions to HSAs, if any, must be "comparable."	No, unless the FSA imposes one.
6. What is that contribution limit?	No limit (except employer's budget).	1/12 <sup>th</sup> x lesser of deductible or \$2,600 individual or \$5,150 family.	None, unless the FSA imposes one.
7. Are "comparable contributions" required?	No, but Code section 105(h) nondiscrimination requirements apply to self-funded HRAs.	Yes, except, per Notice 2004-2, when the contributions are made through a cafeteria plan. Code section 4980G provides requirements. The comparable contribution rules as interpreted in Notice 2004-2 impose both a minimum coverage standard and a minimum nondiscriminatory amount standard on employer-funding to HSAs.	No, but Code sections 105(h) and 125 nondiscrimination requirements apply.

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8. May an employee make pre-tax, salary reduction contributions?	No, it must be funded by employer contributions only.	Yes, plus an above the line deduction is permitted on the individual's Form 1040 if the contribution is made by an individual, is <u>not</u> otherwise pre-tax and is otherwise deductible. It is not clear a cafeteria plan should be involved for an employee to make a pre-tax, salary deferral contribution.	Yes, although a cafeteria plan must be involved.
9. Is a deduction allowed for individual contributions?	No, individual contributions are not permitted.	Yes, subject to limits.	No, only salary reduction contributions are allowed from participants.
10. Does HIPAA privacy apply?	Yes, it is a group health plan under ERISA, and thus it is a health plan under HIPAA privacy.	For the HSA, the answer depends on if it is a group health plan under ERISA, a health plan under 45 C.F.R. § 160.103 <sup>3</sup> or another form of health plan described in the HIPAA privacy regulations.	Yes, for the same reasons explained for an HRA.

<sup>3</sup> HIPAA's health plan definition includes an "individual or group plan . . . (viii) An employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of two or more employers . . . (xvii) Any other individual or group plan, or combination of individual or group plans, that provides or pays for the cost of medical care . . ." 45 C.F.R. § 160.103 (health plan definition).

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11. Does HIPAA security apply?	Yes	It depends on if it is a group health plan for ERISA or a health plan as defined under the HIPAA privacy regulations. <sup>4</sup>	Yes
12. Does HIPAA EDI (the standard electronic transaction requirement) apply?	Not if the HRA meets the requirements to be a flexible spending account ("FSA") under Code section 106. The Center for Medicare and Medicaid Services stated in a Q&A on its website that an FSA is not subject to electronic standard transaction requirement.	It depends on whether the HSA is a group health plan or a health plan for purposes of the electronic standard transaction regulations.	No, if it satisfies the definition under Code section 106.
13. Does COBRA apply?	Yes	No, per Notice 2004-2, because there is a statutory language providing an exception from Code section 4980B. <sup>5</sup> There is no such statutory exception from ERISA's COBRA requirements or the similar requirements in the Public Health Service Act that would exempt an employer-funded HSA from being a group health plan. The application of ERISA's COBRA provisions will depend upon whether the HSA is an	Maybe, depending on whether the FSA qualifies for the exception in § 54.4980B-2, Q&A-8(b).

<sup>4</sup> *Id.*

<sup>5</sup> Code section 106(d)(2) by cross referencing similar rules to those in Code section 106(b)(5) as applicable to the HSAs is where the exception is found. Code section 106(b)(5) is the exception from COBRA for Archer MSAs.

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		"employee welfare benefit plan" providing health benefits under section 213(d) of the Code. <sup>6</sup> See question 2 regarding whether an employer-funded HSA is an employee welfare benefit plan subject to ERISA.	
14. Are employer plan design limits permitted (e.g., use is allowed only for items not covered by plan by virtue of deductible or copayment)?	Yes, by drafting the plan document and plan design.	Yes, provided the custodian's or trustee's adoption agreement permits the employer to design limits, and the custodian/ trustee or some other party monitors distribution requests for compliance with such limits.	Yes
15. Is a prescription Rx drug card benefit permitted before the HDHP deductible is met?	Yes	No. A separate prescription drug plan or rider cannot provide benefits until the minimum annual deductible in the HDHP is met. Rev. Rul. 2004-38, 2004-15 I.R.B. 717 (April 12, 2004). Transitional relief was provided for months prior to January 1, 2006, so that individuals covered by a separate plan or a rider to the HDHP that allowed prescription drug benefits before the minimum deductible of the HDHP is	Yes

<sup>6</sup> ERISA § 607(i).

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		met are eligible individuals and may make HSA contributions for months prior to January 1, 2006. Rev. Proc. 2004-22, 2004-22 I.R.B. 727 (April 12, 2004).	
16. Does the "use it or lose it" rule apply?	No	No	Yes
17. Is the account nonforfeitable?	Maybe	Yes	No
18. Can an employee rollover the account?	No	Yes, to an Archer MSA or separate HSA.	No
19. Can the plan design continue cost containment design beyond the out-of-pocket maximum, such as requiring payment of a copay per emergency room visit or specialist visit for in-network service visits or a copay per visit or per prescription for out-of-network services?	Yes	No. For in-network services once the out-of-pocket maximum for the high deductible health plan of \$5,000 currently for an individual and \$10,000 for a family is satisfied, the individual must have no further out-of-pocket payments for in-network care. Cost containment may continue for out-of-network services, because there is no required limit on the out-of-pocket maximum in that case.	Yes

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20. What preventative care benefits may the health care coverage provide?	There are no limits on the amount or types of preventative care coverage that can be provided by a group health plan covering the individual at the same time as the HRA.	<p>Only the preventative care items currently listed in IRS Notice 2004-23, 2004-15 I.R.B. 725 (April 12, 2004), may be covered by the HDHP now without a qualifying deductible. The Notice lists the following as acceptable preventative care within the safe harbor:</p> <ul style="list-style-type: none"> <li>▪ periodic health evaluations, including tests and diagnostic procedures ordered in connection with routine examinations, such as annual physicals;</li> <li>▪ routine prenatal and well-child care;</li> <li>▪ child and adult immunizations;</li> <li>▪ tobacco cessation programs;</li> <li>▪ obesity weight-loss programs; and</li> <li>▪ screening services.<sup>7</sup></li> </ul>	There are no limits on the amount or types of preventative care coverage that can be provided by a group health plan covering the individual at the same time as the FSA.

<sup>7</sup> Preventive Care screenings include: cancer screening for breast cancer (e.g., mammograms), cervical cancer (e.g., pap smear); colorectal cancer, prostate cancer (e.g., PSA test), skin cancer, oral cancer, ovarian cancer, testicular cancer, thyroid cancer; heart and vascular disease screenings for abdominal aortic aneurysm, carotid artery stenosis, coronary heart disease, hemoglobinopathies, hypertension, lipid disorders; infectious disease screenings for bacteriuria, chlamydial infection, gonorrhea, Hepatitis B virus infection, Hepatitis C, Human Immunodeficiency Virus (HIV) infection, Syphilis, Tuberculosis infection; mental health conditions and substance abuse screening for dementia, depression, drug abuse, problem drinking, suicide risk and family violence; metabolic, nutritional and endocrine conditions screening for anemia, iron deficiency, dental and periodontal disease, diabetes mellitus, obesity in adults, thyroid disease; Musculoskeletal disorders screening for osteoporosis; obstetric and gynecological condition screening for bacterial vaginosis in pregnancy, gestational diabetes mellitus, home uterine activity monitoring, neural tube defects, pre-eclampsia, Rh incompatibility, Rubella, Ultrasonography in pregnancy; pediatric conditions screening for child developmental delay, congenital hypothyroidism, lead levels in

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		<p>Preventive care does not include any service or benefit intended to treat an existing illness, injury or condition.</p> <p>If a state insurance law requires coverage of a certain benefit without meeting a deductible, the determination of whether that benefit is preventative care for purposes of the preventative care exception for a HDHP is to be based on the standards in Notice 2004-23 and not the state's definition.</p>	
21. Can vision/dental coverage be provided?	Yes, without limit.	Yes	Yes

childhood and pregnancy, phenylketonuria, scoliosis, adolescent idiopathic; and vision and hearing disorders screening for glaucoma, hearing impairment in older adults and newborn hearing.

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22. May an Employee Assistance Plan be provided with more services than just referrals only (e.g., three counseling sessions per problem)?	Yes, without limit.	Not clear under current guidance. Currently such coverage is not expressly permitted in the statute or Notice 2004-2.	Yes
23. Is preventive care coverage allowed?	Yes, without limit.	The HSA may reimburse preventative care. The HDHP may only cover that permitted by statute, or by guidance issued by the Secretary of Treasury. The Secretary of Treasury issued guidance in IRS Notice 2004-23. <sup>8</sup> See question 20 above. The statutory reference is to the wrong section of the Social Security Act.	Yes, without limit.
24. Can the participant carryover and accumulate the account balance from year to year?	Yes, if any amount is left.	Yes, if any amount is left.	No
25. Does the arrangement have an exception to the Code section 125 prohibition on deferred compensation?	No	Yes	No

<sup>8</sup> 2004-15 I.R.B. 725 (April 12, 2004).

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26. Does the "uniform coverage" rule apply?	No	No	Yes
27. Is a summary plan description required?	Yes	Only if it is an employer-sponsored plan subject to ERISA.	Yes
28. Is a Form 5500 required?	Yes, if the exceptions to filing a Form 5500 do not apply.	Only if (1) it is an employer-sponsored plan and (2) no exceptions apply.	Yes, if the exceptions to filing a Form 5500 do not apply.
29. May a health FSA be offered with the option?	Yes, however, the HRA plan document needs to prescribe the ordering of payment in the document; otherwise the HRA pays first and FSA second.	Only in the limited circumstances allowed by Rev. Rul. 2004-45, 2004-22 I.R.B. ____ (June 1, 2004). Rev. Rul. 2004-45 allows an HSA to be combined with a <i>limited-purpose health FSA</i> that pays or reimburses benefits only for permitted coverage, that is not through insurance and is not for long-term care services, and preventative care. A <i>post-deductible health FSA</i> that does not pay or reimburse any medical expense incurred before the HDHP's minimum annual deductible is satisfied may also be offered with an HSA.	N/A

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30. May a HRA be offered with the option?	N/A	Only in the limited circumstances allowed under Rev. Rul. 2004-45. In other words, a <i>limited-purpose HRA</i> that pays or reimburses benefits for permitted insurance, permitted coverage or preventive care may be combined with an HSA. A <i>suspended HRA</i> that does not pay or reimburse, ever, any medical expense incurred during the suspension period (other than preventive care, permitted insurance or permitted coverage) is also okay with an HSA, if additional requirements are met. A <i>post-deductible HRA</i> is also allowed with an HSA if it pays or reimburses medical expenses incurred after the HDHP deductible is satisfied. A <i>retirement HRA</i> that pays or reimburses only post-retirement medical expenses is the last allowed combination. Rev. Rul. 2004-45.	Yes, however, the HRA plan document needs to prescribe the ordering of payment in the document; otherwise the HRA pays first and FSA second.

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31. May all three options be offered together?	Yes, so long as the ordering rules of Rev. Rul. 2004-45 and Notice 2002-45 are followed.	Yes, so long as the ordering rules of Rev. Rul. 2004-45 and Notice 2002-45 are followed, and if HSA contribution eligibility is desired, the allowed combinations described in Rev. Rul. 2004-45 are respected.	Yes, so long as the ordering rules of Rev. Rul. 2004-45 and Notice 2002-45 are followed.
32. Does a custodian/trustee have to be involved to establish the arrangement?	No	Yes	No
33. Is this arrangement funded?	Not required to be funded, but some employers do fund (more frequently seen in union plans).	Yes	Not required to be funded, but some employers do fund (usually using a VEBA).
34. Is the arrangement portable?	No. Employee can only use the account after a COBRA qualifying event, such as employment termination, by paying for COBRA to continue coverage.	Employee can take his HSA and can rollover the account to another HSA or an Archer MSA.  The rollover can occur while the employee is still employed.	No
35. May the account be used to pay for long-term care insurance?	Yes	Yes, and also the employee share of Part B of Medicare or Medicare HMO premiums or employer-sponsored retiree medical plan premiums.	Not on a pre-tax basis.

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36. May it be used to pay for COBRA coverage?	Yes, if plan design permits.	Yes, and also for health continuation while receiving unemployment compensation.	No
37. May it be used to pay for health insurance premiums?	Yes	Only in limited situations.	No
38. Must the arrangement be opened before any expense is incurred?	Yes, it is a group health plan, and as such it must be established before the expense to be reimbursed is incurred (Rev. Rul. 2002-58, 2002-1 C.B. 541).	Yes. Notice 2004-2. However, transitional relief was provided for 2004 permitting the establishment of an HSA for an eligible individual on or before April 15, 2005, for calendar year 2004 to reimburse qualified medical expenses incurred on or after the later of: (1) January 1, 2004, or (2) the first day of the month the individual became eligible to establish an HSA. Notice 2004-25, 2004-15 I.R.B. 727 (April 12, 2004).	Yes, for the same reasons explained for an HRA.
39. Do the Medicare Secondary Payer ("MSP") rules apply?	Probably yes. HHS's prior letter ruling position <sup>9</sup> that if the arrangement was within a Code section 125 plan, it would not be subject to MSP, probably would not apply in the context of an HRA,	If the HSA is individually funded and created, no. If it is a group health plan under Code section 5000(b), then yes, unless it is funded by employee contributions through a 125 plan and can successfully argue,	No, based on HHS's prior letter ruling position so long as the FSA is not funded with true employer contributions. If the employer funds the FSA, it is probably subject to MSP.

<sup>9</sup> Note the prior letter ruling was only applicable to the entity who received the letter ruling.

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	because an HRA cannot be funded with employee funds through a Code section 125 plan. This means you need to explain to participants who are protected by the MSP rules that Medicare may be able to seek payment from the HRA or the individual for claims actually paid by Medicare as the primary plan when Medicare should have been secondary to the HRA and the HRA should have paid primary.	based on HHS's prior letter ruling position, that it should not be subject to MSP. However, if employer funded the HSA, it probably is subject to MSP. If the HSA is subject to MSP, this means you need to explain to participants who are protected by the MSP rules that Medicare may be able to seek payment from the HSA or the individual for claims paid by Medicare as the primary plan when Medicare should have been secondary to the HSA.	
40. Do HIPAA's creditable coverage, special enrollment and nondiscrimination (Code sections 9801-9802) rules apply?	Yes, it is a group health plan.	The answer depends on if the arrangement is a group health plan.	Yes, unless the exception in ERISA Technical Release No. 97-01 at 62 Fed. Reg. 67687 applies.
41. Is an extra contribution during ages 55-65 permitted?	No, unless the employer decides to make the contribution, and the contribution passes the Code section 105(h) nondiscrimination rules.	Permitted, up to \$500/year.	No, unless the employer decides to allow it, and both the feature and the contribution pass the applicable Code nondiscrimination rules.

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42. Do ERISA's claims procedures applicable to group health plans apply?	Yes	Only if it is an employer-sponsored plan subject to ERISA.	Yes
43. Are over-the-counter medical expenses reimbursable?	Yes, if the HRA plan is drafted to define reimbursable medical expenses as those defined under Code section 213(d). <i>See</i> Rev. Rul. 2003-102, 2003-38 I.R.B. 559.	Yes, if the HSA custodian agreement or trust is drafted to define reimbursable medical expenses as those defined under Code section 213(d). <i>See</i> Rev. Rul. 2003-102, 2003-38 I.R.B. 559. This will depend upon the custodian or vendor selected and the adoption agreement available from such custodian/trustee.	Yes, if the FSA is drafted to satisfy Rev. Rul. 2003-102, 2003-38 I.R.B. 559.
44. What are the consequences of reimbursement of an improper expense?	Risk entire plan's tax status.	The answer depends on whether the HSA is an individual contract or group plan. If it is either, there is a 10% additional tax on the employee.	Risk entire plan's tax status.
45. Are employer contributions subject to FICA or FUTA?	Not subject to FICA or FUTA.	Not subject to FICA or FUTA.	Not subject to FICA or FUTA.
46. Can family members contribute?	No	Yes	No

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47. Are earnings/income on amounts in the account exempt from tax?	The earnings are exempt from tax only if the funds for the HRA are held in a voluntary employee beneficiary association trust qualified under Code section 501(c)(9) ("VEBA") and are not UBTI. However, no earnings are required to be credited on the account balance, and in many situations HRAs are only an account balance in accounting records and are not funded and thus there are no earnings to tax.	Yes, no earnings are taxed. Notice 2004-2 provides amounts are held in IRA-like account. Earnings may be subject to UBIT Code section 223(e)(1).	Only if the funds for the FSA are held in a VEBA and are not UBTI. As is the case with HRAs, however, no earnings must be credited on accumulations, and in most situations, FSAs are only an accounting entry with no earnings to tax.
48. Do the VEBA contribution and qualified asset account accumulations limits (Code sections 419-419A) apply?	Only if a VEBA is used.	No	Only if a VEBA is used.

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49. What are the consequences of excess contributions?	There are no excess contributions, because no contribution limit applies as long as it is funded solely by employer contributions. Rev. Rul. 2002-41. Only the VEBA limits on contributions may apply if the HRA is funded and not just a bookkeeping entry. If the HRA is unfunded, there is no limit and thus no excess contributions.	A 6% excise tax applies under Code section 4973.	If the FSA provides a contribution limit, an excess contribution can threaten the entire plan's tax status.
50. When is a distribution not taxed?	If it is used for qualified medical expenses incurred after the HRA is established (Code section 213(d)).	If it is used for qualified medical expenses incurred after establishment of HSA (Code section 213(d)) or it is rolled over to another HSA or an Archer MSA. If used for non-qualified expenses, a 10% tax applies under Code section 223(f)(4) in addition to the income tax.	If it is used for qualified medical expenses incurred after the FSA is established (Code section 213(d)).
51. Must someone (other than the individual) substantiate whether the funds distributed are used for qualified expenses?	Yes. Plan administrator or its subcontractor must determine in connection with reimbursing the expense.	No, the trustee or custodian is not required to make the determination of whether the use is for a qualified medical expense, but the trustee or custodian may decide by plan design to make such determinations.	Yes. Plan administrator or its subcontractor must determine in connection with reimbursing the expense.

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52. What happens to the account on the account beneficiary's death?	COBRA must be offered to qualified beneficiaries. The right to reimbursement from the remaining amount in the account is lost unless the plan design extends coverage or unless the qualified beneficiary elects COBRA.	The account is still an HSA for the surviving spouse; however, for the other descendants the account is no longer an HSA after the account pays the expenses of the decedent's last illness. The fair market value of the account is included in decedent's estate.	Same as the answer for HRAs.
53. Are contributions reported on Form W-2?	No	Yes	Yes
54. Are distributions reported on Form 1099?	No. Code section 6041(f).	To be determined. The rules will be similar to those for Archer MSAs.	Yes, for payments made after 2002 through credit cards, debit cards and stored value cards, Rev. Rul. 2003-43, unless prohibited by Code section 6041(f). Notice 2004-16, 2004-9 I.R.B. 527.
55. Is reporting required by the covered individual?	No	Yes	No

Feature	HRA (Rev. Rul. 2002-41 and Notice 2002-45)	HSA (Code § 223, Notice 2004-2, Rev. Rul. 2004-38, Rev. Rul. 2004-45, Rev. Proc. 2004-22, Notice 2004- 23, Notice 2004-25 and Field Assistance Bulletin 2004-1)	FSA (Code §§ 105, 106 and Proposed Treasury Regulation § 1.125-2)
56. May debit cards/stored value or credit cards be used?	Yes, provided the requirements of Rev. Rul. 2003-43, 2003-1 C.B. 935, are satisfied.	Yes, provided the requirements of Rev. Rul. 2003-43, 2003-1 C.B. 935, are met and HSAs are considered analogous to HRAs or FSAs. However, if the restrictions in the custodial or trust agreements prohibit the issuance of debit cards on such accounts, debit cards may not be available. Rev. Rul. 2003-43 by its express terms only applies to health reimbursement accounts and health flexible spending accounts.	Yes, provided the requirements of Rev. Rul. 2003-43, 2003-1 C.B. 935, are satisfied.
57. Is the account divisible upon divorce?	This is a plan design and drafting issue.	Yes	This is a plan design and drafting issue.
58. Does the arrangement provide any incentive for employee retention?	Yes	No, because the account is the employee's and the employee may withdraw the amounts as soon as they are deposited, like a SEP, or take the account when she leaves.	Yes
59. Can plan design provide for accruals by pay period or monthly instead of annually?	Yes	Yes, it must, because the deduction for the contribution is permissible only if the only coverage the individual has <i>for the month</i> is a high deductible health plan.	Yes

<b>Feature</b>	<b>HRA (Rev. Rul. 2002-41 and Notice 2002-45)</b>	<b>HSA (Code § 223, Notice 2004-2, Rev. Rul. 2004-38, Rev. Rul. 2004-45, Rev. Proc. 2004-22, Notice 2004- 23, Notice 2004-25 and Field Assistance Bulletin 2004-1)</b>	<b>FSA (Code §§ 105, 106 and Proposed Treasury Regulation § 1.125-2)</b>
60. Can the individual have a balance in an alternative plan that carries over from a prior year?	Yes	No, that would be coverage beyond the HDHP, unless the guidelines in question 30 above are satisfied.	Yes
61. Can the individual be entitled to Medicare?	Yes	No	Yes
62. Can the individual have long-term care insurance?	Yes	Yes	Yes, outside of the FSA.
63. Can the individual have prescription drug coverage?	Yes	No, unless there is no coverage until the high deductible is met.	Yes
64. Can the individual maintain separate, specific disease or illness policies such as cancer insurance policies or hospitalization policies that pay a set dollar amount per day hospitalized?	Yes	Yes	Yes, although the premiums for such policies may not be reimbursed out of the FSA.

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