

## **HSA ROAD RULES**



### **HSA Road Rules for Employees and Employers Fifth Edition, January 2007**

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## *Introduction to Health Savings Accounts*

Health Savings Accounts are portable, tax-advantaged savings accounts that can be likened to a medical IRA. Unused money is rolled over from year to year (there is no “use it or lose it”), money grows through interest and investments, and it can be used to pay for a wide variety of health and wellness related products and services (see Tables D and E for a partial and summary list of allowable expenditures). Any adult who is covered by a high deductible health plan (and has no other first dollar coverage except for preventive care) may establish an HSA.

HSA-eligible health plans reduce healthcare costs for U.S. businesses dramatically, with some studies citing as 20-30% lower cost than average premiums (*AHIP HSAs and Account-Based Health Plans*, June 2006). Part of these savings should be used to provide the employee with a recurring contribution to their HSA representing a portion of their deductible. This practice allows the employer to recognize significant cost savings while reducing the out-of-pocket healthcare cost risk and providing a portable pool of healthcare money managed directly by the employee.

*Section 1***Universal Health Savings Account Principles for Consumers**

1. You must have an HSA qualified high deductible health plan to open or contribute to a Health Savings Account in your own name.
2. Switching to a high deductible health plan from a traditional low deductible health plan will cut the cost of your health plan substantially. You and/or your employer deposit the savings gained into your HSA. The whole point of a Health Savings Account is to allow you to use that money on a tax-free basis to pay for your health expenses below your new, higher deductible.
3. The money in your Health Savings Account is your own. This means your employer cannot tell you what to do with your own money or restrict what you can spend it on. Since it is your money, it goes with you when you change jobs.
4. You are in charge of your Health Savings Account funds, making you and your doctor the decision makers, not some third-party. Spending your own money also means that you will/should ask about the cost of health care expenditures, which will bring marketplace competition to the world of health care.
5. There is no time limit for when you can reimburse yourself for your health care expenses; you just need to keep legible receipts and records in case you do reimburse yourself or are audited.
6. You decide whether and how much to spend from the account for your medical expenses, whether to spend out-of-pocket or save the HSA money for the future.
7. Anyone can contribute to another person's Health Savings Account. The tax benefit from such a contribution is gained by the person receiving the contribution, not the person giving the contribution.
8. You decide which company will hold your HSA money (your trustee or custodian), and what type of investments you make with your account. Any investment allowed for IRAs is allowed for HSAs (please see Table A).
9. IRS Publication 502 provides a list of allowable expenditures from your Health Savings Account.

Please see Table D and E of this document for a partial and summary list of allowable (tax-free) and non allowable (not tax-free) expenditures from your HSA.

*Section 2***Health Savings Account Eligibility Road Rules**

1. The account holder must have an HSA qualified high deductible health insurance plan.
2. An HSA qualified high deductible health plan has the following characteristics:
  - a. A minimum deductible for self-only coverage of \$1,050 for 2006 and \$1,100 for 2007 (indexed annually for inflation);
  - b. A minimum deductible for family coverage of \$2,100 for 2006 and \$2,200 for 2007 (indexed annually for inflation);
  - c. A maximum out-of-pocket limit (including deductibles and co-pays) of \$5,250 for 2006 and \$5,500 for 2007 for self-only coverage, and \$10,500 for 2006 and \$11,000 for 2007 for family coverage (indexed annually for inflation);
  - d. Preventive care can have first dollar coverage. Preventive care examples include: periodic health evaluations like annual physicals, screening services like mammograms, routine prenatal and well-child care, child and adult immunizations, tobacco cessation programs, and obesity weight loss programs;
  - e. Prescription drugs taken to prevent the onset of a condition for which a person has developed risk factors for can be considered preventive care, thus making co-pays allowed to apply to preventive care;
  - f. As a general rule of thumb, if you are treating an existing illness or condition with either a drug or procedure, that drug or procedure is not considered to be preventive care (because the condition already exists, and therefore you cannot be preventing it). If you are trying to prevent an illness or condition from occurring by taking a drug or with a procedure, that is considered to be preventive. Some drugs, such as cholesterol lowering ones, can be both preventive and non-preventive under HSA rules, depending on your own health situation;
  - g. Higher out-of-pocket (co-pays and co-insurance) is allowed for out-of-network care;
  - h. Until January 1, 2006, you can have an HSA qualified plan that pays for prescription drugs below the deductible, as long as the prescription drug benefit is a separate plan or rider;
  - i. After January 1, 2006, prescription drug coverage before the deductible is met is not allowed.

*Section 2***Health Savings Account Eligibility Road Rules (continued)**

3. You cannot be covered by any other health insurance that reimburses you for health expenses you incur, unless it is another HSA qualified high deductible health plan. If a family has all members covered under two HSA qualified high deductible health plans, or some family members are on one qualified plan and the other family members are under another qualified plan, the maximum annual contribution to the account remains in force. Just because you have coverage under two HSA qualified high deductible health plans does not mean you can double your HSA contribution.
4. For those covered by two HSA qualified high deductible health plans, it is a violation of the coordination of benefit rules to be paid by each plan for the same expense.
5. Flexible Spending Accounts (FSAs) and Health Reimbursement Arrangements (HRAs) may make you ineligible for an HSA unless they are: (1) "limited purpose" (limited to dental, vision, child care, or preventive care) or (2) "post-deductible" (pay for medical expenses after the plan deductible is met). HRAs that set aside money only for retiree health expenses are also acceptable as are ones that are suspended.
6. An employer can restrict the type of expenditures an employee makes from their FSA during a two and a half month grace period that some employers may grant to employees for relief from the FSA "use-it-or-lose-it" rule. If an employer restricts the FSA expenditures to non-health items (such as is the case with a limited-purpose FSA) during this grace period, then such employee is eligible for an HSA, provided they have the proper high deductible health plan.
7. If you are enrolled in Medicare or Medicaid, you cannot have an HSA.
8. Tricare does not currently offer an HSA qualified high deductible health plan. Therefore, if you are on Tricare, you cannot have an HSA. Once Tricare offers an HSA qualified high deductible health plan, and you select it, you can have an HSA.
9. If you have received any Veterans Administration health benefits in the last three months, you cannot have an HSA.
10. If you are Medicare eligible and are not enrolled in Medicare, you can open or contribute to an HSA if you have an HSA qualified health insurance plan (please see Table B).
11. You cannot establish separate HSA accounts for your minor dependent children.

*Section 2***Health Savings Account Eligibility Road Rules (continued)**

12. You do not have to have earned income from employment to have an HSA.
13. There are no income limits to have an HSA.
14. You do not have to itemize your deductions on your federal income taxes to deduct your contributions to an HSA.
15. You can open an HSA and also have specific disease or illness, accident, disability, dental care, vision care, and long-term care insurance, and be enrolled in Employee Assistance, disease management, drug discount and wellness programs.

*NOTE:* Reasonable benefit designs (lifetime limits on benefits, limits to usual, customary and reasonable amounts, limits on specific benefits, pre-certification requirements) are not counted toward the out-of-pocket maximum.

*Section 3***Health Savings Account Deposit Road Rules**

1. You must have an HSA qualified high deductible health plan to open or contribute to an HSA.
2. If you no longer have an HSA qualified high deductible health plan, you cannot contribute to your Health Savings Account, but you can continue to spend or save the funds already deposited as you see fit.
3. The maximum amount you can contribute per year is \$5,450 for 2006 and \$5,650 for 2007 for family coverage and \$2,700 for 2006 and \$2,850 for 2007 for self-only coverage (indexed annually for inflation), excluding catch-up contributions for those 55 years and older.
4. Beginning in 2007, the deductible contribution is not limited to the annual deductible under the high deductible health plan. Prior to 2007, your annual HSA deposit can never exceed your insurance plan's deductible, unless you are 55 or older and are making "catch-up" contributions.
5. Deposits to an HSA must be made in cash or through a rollover from a Flexible Spending Account (FSA), Health Reimbursement Arrangement (HRA) or Individual Retirement Account (IRA).
6. For FSA/HRA rollovers, contributions to an HSA must not exceed an amount equal to the lesser of (1) the balance in the health FSA or HRA as of September 21, 2006, or (2) the balance in the health FSA or HRA as of the date of the distribution. The distribution is not includible in income (or carry other penalties) and does not count against the maximum tax deductible contribution that can be made to the HSA.
7. For IRA rollovers, a direct trustee-to-trustee transfer can be made only one time per lifetime (the only exception being if a contributing individual goes from having self-only to family coverage during the tax year). The amount that can be distributed from the IRA and contributed to an HSA is limited to the otherwise maximum deductible contribution amount to the HSA based on the type of coverage under the high deductible health plan at the time of the contribution. Amounts distributed from an IRA under the provision are not includible in income to the extent they would otherwise be includible in income and are not subject to the 10-percent additional tax on early distributions. The provision does not apply to simplified employee pensions (SEPs) or to SIMPLE retirement accounts.
8. Individuals 55 and older can make additional catch-up contributions until they enroll in Medicare. For a schedule of the increasing catch-up deposit amounts allowed, please see Table B.

*Section 3***Health Savings Account Deposit Road Rules (continued)**

9. Catch-up contributions are pro-rated for the number of months eligible and it does not matter when the 55<sup>th</sup> birthday falls during the year.
10. If you are covered by your HSA qualified high deductible health plan for the entire year, you may deposit the entire catch-up amount starting with the year you turn 55.
11. In the year you enroll in Medicare, you must pro-rate your catch-up contribution for the number of months you had HSA qualified high deductible health plan coverage, prior to the month your Medicare enrollment is effective.
12. If you have a family plan with a per-person deductible below the overall family deductible, you can deposit into the account the maximum allowed, if you have enough people in the family so that the sum of their per-person deductibles exceeds the maximum allowable family deposit. However, you cannot deposit more into the HSA than the overall or total family deductible. For example, a family of two with a \$2,000 per person deductible, and an overall deductible, or total family deductible of \$5,000, can only deposit \$4,000 into the HSA. If a family of three has a \$2,000 per-person deductible, and a \$5,000 overall or total family deductible, then the maximum deposit to the HSA is \$5,000.
13. Trustees and custodians may open an account with a nominal deposit before the HSA qualified high deductible health plan is in effect. For example, if an individual's or an employer's HSA qualified high deductible health plan becomes effective January 1, the trustee or custodian could open the account with a nominal deposit, say \$1, in December of the preceding year. The account will not officially be established as an HSA until the first day of the first full month the health plan is in effect. In this example, that date is January 1. The trustee does not report this account as an HSA until the health insurance is in effect, and the account is, in fact, an HSA.
14. A trustee or custodian can use the date the account application was signed as the start date for the Health Savings Account provided, as of that date, the high deductible health plan is in effect.
15. There is no tax code rule preventing a custodian, trustee, HSA administrator or insurer from making your Health Saving Account effective date back to the date you are first eligible (i.e., the first day of the first full month the HSA high deductible health plan is in effect). This is the date from which the maximum allowable contribution is calculated, and is the date when allowable withdrawals can begin.

*Section 3***Health Savings Account Deposit Road Rules (continued)**

16. You can “front load” or fully fund your HSA on day one of your HSA being in effect, provided you do not exceed the annual maximum amount (or the pro-rated amount if your account is open on a date other than January 1st). You can make the deposit anytime after your HSA is open. If you lose your high deductible health plan later in the year, you will have to withdraw some of the contribution from the account.
17. If you become covered in a high deductible health plan in a month later than January, you can “back load” or make full contributions for the preceding months up to January. If, however, you fall out of qualifying insurance coverage (for reasons other than death or disability) before you have fulfilled the number of preceding month for which you made the HSA contributions, all the back loaded months of HSA contributions are includible in your gross income and you face a 10-percent additional tax to the amount includible.
18. You can deposit funds into your HSA in a lump sum or in any amounts or frequency you wish. However, your account trustee/custodian can impose minimum deposit and balance requirements.
19. Rollovers from an Archer Medical Savings Account into a Health Savings Account are allowed if completed within 60 days of withdrawing the funds from your Archer Medical Savings Account.
20. The term “rollover” has several meanings. Rollover of HSA funds from year to year of unspent balances is well understood. However, IRA and HSA rollovers have another meaning to the IRS: you are allowed to take any amount of your HSA funds out of your account out once a year, and there is no limitation on what those funds can be spent on. If the funds are returned to the HSA within 60 days, there is no tax or penalty. However, if those funds are not returned to the HSA within 60 days, then you must pay the taxes due on those funds, and the 10% penalty. Unofficially, this “rollover” rule is known as the “playing with fire” rule.
21. Unlimited HSA trustee to HSA trustee transfers are allowed, meaning you can move your HSA account any number of times you want in a given year.
22. If you have contributed an amount into your HSA which exceeds your maximum allowable deposit, you may withdraw the excess amount and any earnings on the excess amount prior to April 15<sup>th</sup> of the following year without paying a tax penalty. However, you must pay income tax on your excess contributions and income tax on any earnings of the excess contribution.

*Section 3***Health Savings Account Deposit Road Rules (continued)**

23. If you do not withdraw the excess contribution to your HSA prior to April 15<sup>th</sup> of the following year, you must pay a 6% excise tax on the excess contribution, and on any earnings of the excess contribution. If in the next year you decreased your maximum contribution by the amount of your excess contribution made the year before, you do not have to pay the 6% excise tax again. If, however, you leave the excess contribution in, and do not decrease your maximum contribution by the amount of your excess contribution made the year before, you will have to pay the 6% excise tax each year the excess contributions and earnings are in the HSA.

#### Section 4

### Health Savings Account Spending Road Rules

1. There are a wide range of allowable tax-free HSA expenditures, including vision and dental expenses, and for example, braces for your children. A description of qualified Health Savings Account expenditures can be found in IRS Publication 502, and is located at the web at: <http://www.irs.gov/pub/irs-pdf/p502.pdf>. Publication 502 has great examples, but it is not the definitive list (please see Table D for a partial list of allowable tax-free expenditures and Table E for non allowable expenditures).
2. If an expenditure from your HSA is used for purposes other than a qualified health care expense as defined in IRS Publication 502, then the amount withdrawn is subject to both income tax and a 10% penalty, unless the person who makes such a withdrawal from their HSA is over the age of 65. If 65 years old or older, the amount withdrawn for non-medical purposes is treated as retirement income, and is subject to normal income tax, but is not subject to the 10% penalty.
3. Withdrawals that were made for what the HSA owner thought were qualified medical expenditures, but turned out not to be qualified medical expenditures, can be returned to the HSA if there is clear and convincing evidence that the expenditure was a mistake of fact. Such repayment to the Health Savings Account must be made on or before April 15<sup>th</sup> of the year following when the individual knew, or should have known, the expenditure was a mistake.
4. Other qualified medical expenses from an HSA include out-of-pocket expenditures while enrolled in Medicare (including Medicare premiums, deductibles, coinsurance and co-pays), employee share of premiums for employer-based coverage, but not Medigap premiums.
5. Everyone with an HSA must keep all their receipts showing their expenditures from their account. There are two key reasons to do this: (1) if you exceed your deductible, you may need the receipts to send to your insurer, and (2) in case you are audited by the IRS, you need to explain your HSA expenditures.
6. You may use funds from your HSA to reimburse expenses from a previous year, but only if you had an HSA at the time the expenses were incurred.
7. April 15, 2007 is the last date that you can open your Health Savings Account to fund and reimburse yourself for expenses incurred in 2006 while covered by a high deductible health plan.

*Section 4***Health Savings Account Spending Road Rules (continued)**

8. Your spouse will inherit your HSA upon your death, unless you provide otherwise.
9. Should the Health Savings Account holder have no spouse, the funds in the account shall no longer be treated as an HSA but part of the individual's estate and will be subject to estate taxes.
10. HSA funds cannot be used to pay for health insurance premiums unless the individual is receiving federal or state unemployment benefits.
11. HSA funds can also be used to pay premiums for COBRA continuation health insurance coverage from a former employer.
12. An employer paying COBRA for an employee with an HSA does not have to continue making deposits into the account. The employer does have to pay the continuing premium for the qualified high deductible health plan.
13. HSA funds can be used to pay premiums for qualified long-term care insurance coverage, subject to the age limits in the Internal Revenue Code (please see Table C).

*Section 5***Health Savings Account Road Rules for Employers**

1. The employee owns your contributions to their HSA as soon as the funds are deposited.
2. You can no more restrict the use of the funds in the employee's Health Savings Account than you can restrict the employee's funds in the employee's personal checking account.
3. Employee contributions to their HSA can be made on an after-tax basis and taken as an above-the-line deduction on their tax return (making such contributions tax-free) or the employee can make pre-tax contributions to their Health Savings Account through a Section 125 (a.k.a. "salary reduction" or "cafeteria") plan.
4. HSAs do not generally constitute "employee welfare benefit plans" under ERISA (that is, you are not subject to the complex legal requirements of ERISA) as long as the establishment of the HSA is completely voluntary on the part of the employee and the employer does not prevent the employee from moving their funds to another HSA, impose conditions on how the funds can be used, influence the investment decisions made, represent that the HSA is an employee welfare benefit plan established or maintained by it, or receive any payment or compensation in connection with the HSA.
5. HSAs can be funded on a (1) pay as you go basis, (2) look back basis, or a (3) pre-funded basis. For (1), it is fine to fund employees' HSAs according to their paycheck schedules (bi-weekly, monthly, etc.), you can decide to quit payments at any point, and an employee hired after January 1 is not entitled to additional HSA contributions. For (2), you must contribute to employees' HSAs for every full month they had been employed. For (3), all eligible employees receive their year's HSA contributions on January 1 and all employees hired after January 1 must be compensated on the same basis (whether by pre-funding, pay as you go, or look back).
6. Employee contributions to their HSA through a cafeteria plan can change on a month-by-month basis. However, you can put reasonable limits on how often those contribution amounts can change.
7. Employer contributions to an employee's HSA are always excluded from employee's income (such contributions are made pre-tax).
8. Employer contributions must be comparable (subject to certain exceptions), meaning that all employer contributions to employees must be the same amount or percentage of the annual deductible for all self-only HSAs and be the same amount or percentage of the annual deductible for all family HSAs.

*Section 5***Health Savings Account Road Rules for Employers (continued)**

9. Employers can make larger HSA contributions for non-highly compensated employees than for highly compensated employees. Highly compensated employees include any employee who was (1) a five-percent owner at any time during the year or the preceding year, or (2) for the preceding year, had compensation from the employer in excess of \$100,000 (for 2007) and, if elected by the employer, was in the group consisting of the top-20 percent of employees when ranked based on compensation. Non-highly compensated employees must all, however, receive contributions comparably.
10. The comparability rule can be applied separately to employees in the following categories: (1) part time who work under 30 hours, (2) full time who work over 30 hours, and (3) former employees.
11. Family covered employees are considered one category and for comparability purposes a greater numbered family can never receive a different amount than a lesser numbered family.
12. If an employee has not established an HSA at the time you fund their HSA, you comply with the comparability rules by contributing comparable amounts plus reasonable interest to the employee's HSA when the employee establishes the HSA, taking into account each month that the employee was a comparable participating employee.
13. If you contribute to any employee's non-employer high deductible health plan HSA then you must do so for all employees with non-employer high deductible health plan HSAs.
14. If a non-comparable contribution is made, the excess cannot be recouped by the employer. Instead, the employer has until April 15<sup>th</sup> of the following calendar year to make the compensatory contributions (plus reasonable interest) to correct for the non-comparable contribution.
15. Comparability rules are likely being violated if "extra contributions" to any employee's Health Savings Account (other than to nonhighly compensated employees) are being made. For example, additional contributions to an employee's HSA being made based on the employee's seniority, length of service or giving catch-up contributions to those employees 55 years and older violate the comparability rules.
16. Employers are not in violation of comparability rules because fired employees in pre-funded or pay as you go contribution schemes may have received more HSA funding than their employment length warranted.

*Section 5***Health Savings Account Road Rules for Employers (continued)**

17. There is a 35% excise tax assessed on all employer contributions made in violation of the comparability rules. All or part of the excise tax can be waived if the failure is found to be reasonable and not due willful neglect.
18. Collectively bargained or unionized employees are exempted from comparability rules.
19. Matching contributions by an employer through a Section 125 plan are not subject to the comparability rule, but are subject to the non-discrimination rules of 125 plans.
20. The non-discrimination rule for Section 125 plans, in general, is that contributions cannot be higher for higher-paid employees than they are for lower-paid employees. Contributions that favor lower-paid employees are allowed.
21. If you make HSA contributions through a cafeteria plan, you can make such contributions conditional to an employee's participation in a health assessment, disease management or wellness program without violating comparability rules.
22. Under certain cafeteria plans, employees have the right to accept other benefits (cash or other taxable benefits) in lieu of part or all of the employer HSA contribution.
23. For employers who do not provide their employees with health insurance but whose employees purchase HSAs on their own, such employer may make pre-tax contributions to such employees' Health Savings Account through a Section 125 plan, as long as the offer is open to all such employees, and the contribution amount follows the Section 125 plan's non-discrimination rule.
24. If you contribute to your employees' plans and there are spousal employees that both have HSAs, you have to contribute to one of the HSAs if they have a family high deductible health plan that covers both spouses. However, if you contribute to a single employee's non-employer provided high deductible health plan HSA, then you must contribute to both spouse's HSAs.

*Section 5***Health Savings Account Road Rules for Employers (continued)**

25. Self-employed, partners and S corporation shareholders are not generally considered employees and cannot receive pre-tax employer contributions to their Health Savings Accounts. Self-employed can only take an above-the-line deduction for their premium and Health Savings Account contribution.
26. Regardless of how your S corporation or your LLC is structured, the company cannot make pretax contributions to owners, shareholders, or partners.
27. You may transfer of the balance of an FSA/HRA into in an employee's HSA.
28. A limited purpose FSA or a limited purpose HRA is allowed for expenditures like dental, vision or preventive care.
29. Post deductible HRAs or post deductible FSAs are allowed to pay for expenses above the minimum HSA deductible.
30. COBRA rules apply to the high deductible health insurance plan portion of an HSA, but not to the account.

## Section 6

### Why Health Savings Accounts Were Designed this Way

1. **Why can't the out-of-pocket amount be tied to the maximum contribution?** Tying the maximum contribution rate to the out-of-pocket maximum is a viable policy, but the cost to the Federal government in lost taxable income made that idea politically unviable when the law was passed.
2. **Why not carve out prescription drugs and allow tiered co-pays?** Including prescription drugs as a benefit below the deductible will drive up the low cost of HSA qualified health plans, and, as a result, reduce the amount of savings derived from switching to an HSA qualified health plan. This means that less money can be deposited each year into the Health Savings Account, which will diminish their appeal and reduce the ability to build up funds in an HSA. Tiered co-pays, or any other benefit that is paid below the deductible, seriously compromises the effect of a consumer spending their own money. When you spend your own money, you spend it differently than if you are spending someone else's money. Think of going out for an all expenses paid meal, versus going to a restaurant where you are paying: you order differently.
3. **Why can't early retirees pay their HSA qualified health insurance premium from their Health Savings Account?** This change in the law was suggested but the objection is that given that there are millions in the individual market who have health insurance but receive no tax break for their purchase, why should insured early retirees get special treatment?
4. **Why can't seniors use their HSA to pay for Medigap coverage?** The guiding principle of HSAs is for people to use their own money to meet a substantial deductible, thereby providing a financial incentive to spend the funds wisely and not to over consume. The main purpose of a Medigap policy is to insure the Medicare deductible.

Allowing HSA funds to pay for Medigap insurance would be akin to allowing HSA funds to buy insurance to cover the HSA deductible. In other words, it would be using HSA funds to defeat the entire purpose of an HSA.

5. **Why are the long-term care premium amounts that can be paid out of an HSA limited?** During the HSA legislation drafting process, there were other issues being negotiated that needed political capital more than allowing for unlimited amounts to be spent on long-term care premiums.

Section 6

**Why Health Savings Accounts Were Designed this Way (continued)**

6. **Why can't HSA distributions be tax free upon your death?** The revenue loss to the Federal government made the price tag for that suggestion too high.
7. **Why can't we have one joint HSA Account and still make catch-up contributions?** There can be only one primary account holder of the HSA. Both spouses may contribute. The practical effect of this restriction is not significant.
8. **Can we use our HSA to pay for medical services provided in other countries, like Mexico and Canada?** Yes.
9. **Are catch-up contributions pro-rated when you turn 55 and 65?** Please see the language in Table C.
10. **If I am self-employed, can I contribute on a pre-tax basis? How about for partnerships or for S corporation owners who own more than 2% or for LLC owners?** Self-employed can only take an above-the-line deduction for their premium and Health Savings Account contribution. Regardless of how your S corporation or LLC is structured, the only way you can structure your HSA contributions is as an above-the-line deduction. The HSA legislation simply cited current law in this regard. It was a political impossibility in the HSA legislation to make the necessary change in law to allow pre-tax contributions for LLC owners, S corporation owners or the self-employed. For further guidance for partnerships and S corporations, see IRS Guidance 2005-8 at <http://www.treas.gov/press/releases/reports/notice%2020058.pdf>.
11. **What is an "above-the-line" deduction?** An above-the-line deduction reduces your Federal taxable income dollar for dollar by the amount you contribute. You do not have to itemize to claim this deduction. For example, if you contribute \$1,000 to your HSA, you reduce your Federal taxable income by \$1,000.
12. **Why can't I pay my health insurance premiums with my HSA?** The money in your HSA is designed to meet your health care expenses below your deductible, not to meet your health insurance premiums. What if people spent their entire HSA deposit on their insurance premiums, and found no funds left to meet their health care costs to meet their deductible? The only time you are allowed to pay the health insurance premium with your HSA funds is if you are collecting Federal or State unemployment benefits or are on COBRA.

*Section 6***Why Health Savings Accounts Were Designed this Way (continued)**

13. **Can you provide a list of qualified medical expenses?** See Tables D and E for a list of allowable and non allowable medical expenses. Please also see IRS Publication 502, which can be found in the U.S. Treasury section of this website, or at <http://www.irs.gov/pub/irs-pdf/p502.pdf>.

Table A

**Allowable Health Savings Account Investments**

Allowable Health Savings Account Investments
→ Bank Accounts
→ Annuities
→ Certificates of Deposit
→ Stocks
→ Bonds
→ Mutual Funds
→ Certain types of Bullion or Coins

*NOTE:* Your HSA custodian or trustee may restrict certain types of investments.

Not Allowable Health Savings Account Investments
→ Collectables: including any work of art, antique, metal, gem, stamp, coin, alcoholic beverage or other personal property as described in Section 408(m)(3) of the Internal Revenue Code
→ Life Insurance Contracts

Table B

**Allowable “Catch-Up” Contributions**

Allowable Catch-Up Contributions	
Tax Year 2004	Up to \$500.00
Tax Year 2005	Up to \$600.00
Tax Year 2006	Up to \$700.00
Tax Year 2007	Up to \$800.00
Tax Year 2008	Up to \$900.00
Tax Year 2009 and Beyond	Up to \$1,000.00

Each spouse age 55 or older can contribute up to the maximum catch-up amount. Catch-up contributions are not pro-rated, unless you did not have HSA qualified high deductible health plan coverage for the entire year. If you had HSA qualified high deductible health plan coverage for the entire year, you can deposit the entire catch-up amount starting with the year you turn 55. If both spouses want to make catch-up contributions, each spouse must have a separate health savings account.

In the year you enroll in Medicare, you must pro-rate your catch-up contribution for the number of months you had HSA qualified high deductible health plan coverage, prior to the month your Medicare enrollment is effective. You can delay enrollment in Medicare Part A only if you delay taking Social Security. You can delay taking Social Security up until age 70 and one half years old.

Once either spouse enrolls in Medicare, that spouse can no longer contribute any funds, including catch-up amounts, to their Health Savings Account. If you are not enrolled in Medicare, you can contribute to your HSA and continue to make catch-up contributions.

*NOTE:* If you enroll in Social Security you will be automatically enrolled in Medicare Part A, which will disqualify you from contributing to an HSA.

Table C

**Allowable Expenditures on Long-Term Care Insurance**

In order to spend money from your HSA on long-term care, your long-term care insurance contract must:

1. Be guaranteed renewable;
2. Not provide for a cash surrender value or other money that can be paid, assigned, pledged, or borrowed;
3. Provide that refunds, other than refunds on the death of the insured or complete surrender or cancellation of the contract, and dividends under the contract, must be used only to reduce future premiums or increase future benefits;
4. Generally not pay or reimburse expenses incurred for services or items that would be reimbursed under Medicare, except where Medicare is a secondary payer, or the contract makes per diem or other periodic payments without regard to expenses.

The amount of qualified long-term care premiums you can pay from an HSA is limited. You can include the amounts below as a qualified medical expense in 2007 (adjusted annually for inflation):

Allowable Long-Term Care Premium Amounts	
Age 40 or Under	Up to \$260.00
Age 41 to 50	Up to \$490.00
Age 51 to 60	Up to \$980.00
Age 61 to 70	Up to \$2,600.00
Age 71 or Over	Up to \$3,250.00

*Table D*

### **Allowable Expenditures from Your Health Savings Account**

There have been thousands of cases involving the many nuances of what constitutes “medical care” for purposes of section 213(d) of the Internal Revenue Code. A determination of whether an expense is for “medical care” is based on all the relevant facts and circumstances. To be an expense for medical care, the expense has to be primarily for the prevention or alleviation of a physical or mental defect or illness. The determination often hangs on the word “primarily”.

*NOTE:* If you are receiving federal or state unemployment insurance, you may pay for your health insurance premiums out of your HSA.

(see next page for a list of allowable expenditures)

Table D

**Allowable Expenditures from Your Health Savings Account (continued)**

Allowable Expenditures from Your Health Savings Account	
Acupuncture	Alcoholism Treatment
Ambulance	Artificial Limb
Artificial Teeth	Bandages
Birth Control Pills (by prescription)	Breast Reconstruction Surgery (mastectomy)
Car Special Hand Controls (for disability)	Certain Capital Expenses (for the disabled)
Chiropractors	Christian Science Practitioners
COBRA premiums	Contact Lenses
Cosmetic Surgery (if due to trauma or disease)	Crutches
Dental Treatment	Dermatologist
Diagnostic Devices	Disabled Dependent Care Expenses
Drug Addiction Treatment (inpatient)	Drugs (prescription)
Eyeglasses	Fertility Enhancement
Guide Dog	Gynecologist
Health Institute (if prescribed by physician)	H.M.O. (certain expenses)
Hearing Aids	Home Care
Hospital Services	Laboratory Fees
Lasik Surgery	Lead-Based Paint Removal
Learning Disability Fees (prescription)	Legal Fees (if for mental illness)
Life-Care Fees	Lodging (for out-patient treatment)
Long-Term Care (medical expenses)	Long-Term Care Insurance (up to allowable limits)
Meals (associated with receiving treatments)	Medical Conferences (for ill spouse/ dependent)
Medicare Premiums	Medicare Deductibles
Nursing Care	Mentally Retarded (specialized homes)
Obstetrician	Nursing Homes
Operations - Surgical	Operating Room Costs
Optician	Ophthalmologist
Organ Transplant (including donor's expenses)	Optometrist
Orthopedic Shoes	Orthodonture
Osteopath	Orthopedist
Over-the-Counter Medicines	Out-of-pocket expenses while enrolled in Medicare
Pediatrician	Oxygen and Equipment
Podiatrist	Personal Care Services (for chronically ill)
Prenatal Care	Post-Nasal Treatments
Prosthesis	Prescription Medicines
Psychiatric Care	PSA Test
Psychoanalysis	Psychiatrist
Psychologist	Psychoanalyst
Radium Treatment	Qualified Long-Term Care Services
Special Education for Children (ill or disabled)	Smoking Cessation Programs
Spinal Tests	Specialists
Sterilization	Splints
Telephones and Television for the Hearing	Surgeon
Therapy	Impaired
Treatment	Transportation Expenses for Health Care
Vitamins (if prescribed)	Vaccines
Wheelchair	Weight Loss Programs
X-Rays	Wig (hair loss from disease)

Table E

**Non-Allowable Expenditures from Your Health Savings Account**

Non-Allowable Expenditures from Your Health Savings Account	
Advance Payment for Future Medical Expenses	Athletic Club Membership
Automobile Insurance Premium	Babysitting (for healthy children)
Boarding School Fees	Bottled Water
Commuting Expenses for the Disabled	Controlled Substances
Cosmetics and Hygiene Products	Dancing Lessons
Diaper Service	Domestic Help
Electrolysis or Hair Removal	Funeral Expenses
Hair Transplant	Health Programs at Resorts, Health Clubs, & Gyms
Household Help	Illegal Operations and Treatments
Illegally Procured Drugs	Maternity Clothes
Medigap premiums	Nutritional Supplements
Premiums for Life or Disability Insurance	Premiums for Accident Insurance
Premiums for your HSA Qualified Health Plan	Scientology Counseling
Social Activities	Special Feeds/Beverages
Swimming Lessons	Teeth Whitening
Travel for General Health Improvement	Tuition in a Particular School for Problem Children

## **Publisher’s Note**

HSA Road Rules is designed to be an easy-to-understand guidebook that provides general planning information and principles relating to Health Savings Accounts. We make no claims concerning its accuracy or validation by any third party. The principles contained in HSA Road Rules do not necessarily apply to your specific circumstances or take into account your individual tax or employee benefits situation. Please consult your own tax or legal advisor that that type of assistance.

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