

UNDERSTANDING THE COMPLEX WORLD OF CAFETERIA & HEALTH REIMBURSEMENT PLANS

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Presented by

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An aerial photograph of a rural landscape. In the foreground, there are rows of golden-brown vineyard plants on the left and a dense grove of green olive trees on the right. A dirt road winds through the fields. In the background, there are rolling hills and mountains under a clear sky. The word "WELCOME!" is superimposed in large white letters across the center of the image.

WELCOME!



Legal Disclosure

We wish to express confidence in the information contained herein. Used with discretion by qualified individuals, it should serve as a valuable management tool in assisting employers to understand the issues involved and to adopt measures to prevent situations which commonly give rise to legal liability. However, it should not be considered a substitute for experienced labor counsel, as it is designed to provide information in a highly summarized manner.

This area of the law changes rapidly, so the reader/viewer should consult with experienced labor counsel for individual responses to questions or concerns regarding any given situation.

ABOUT THE PRESENTER

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- Licensed Health Insurance Broker for 40 years
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- Now located in the historic Marsh Building in downtown Monterey at 700 Camino El Estero
- Independent insurance agency specializing in Group Health Benefits
- UnitedAg District Manager
- UnitedHealthcare Preferred Broker (2019, 2020, 2021, 2022)
- Anthem Blue Cross Ace Broker (2016)
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NOTES

- All information is current as of today
- For many PPACA-related issues, there are differences of interpretation among industry professionals
- This material is not legal or tax advice and should not be construed as such. The material is provided merely as a general guidance and is not intended to be solely relied upon for compliance purposes.

NOTES--CONTINUED

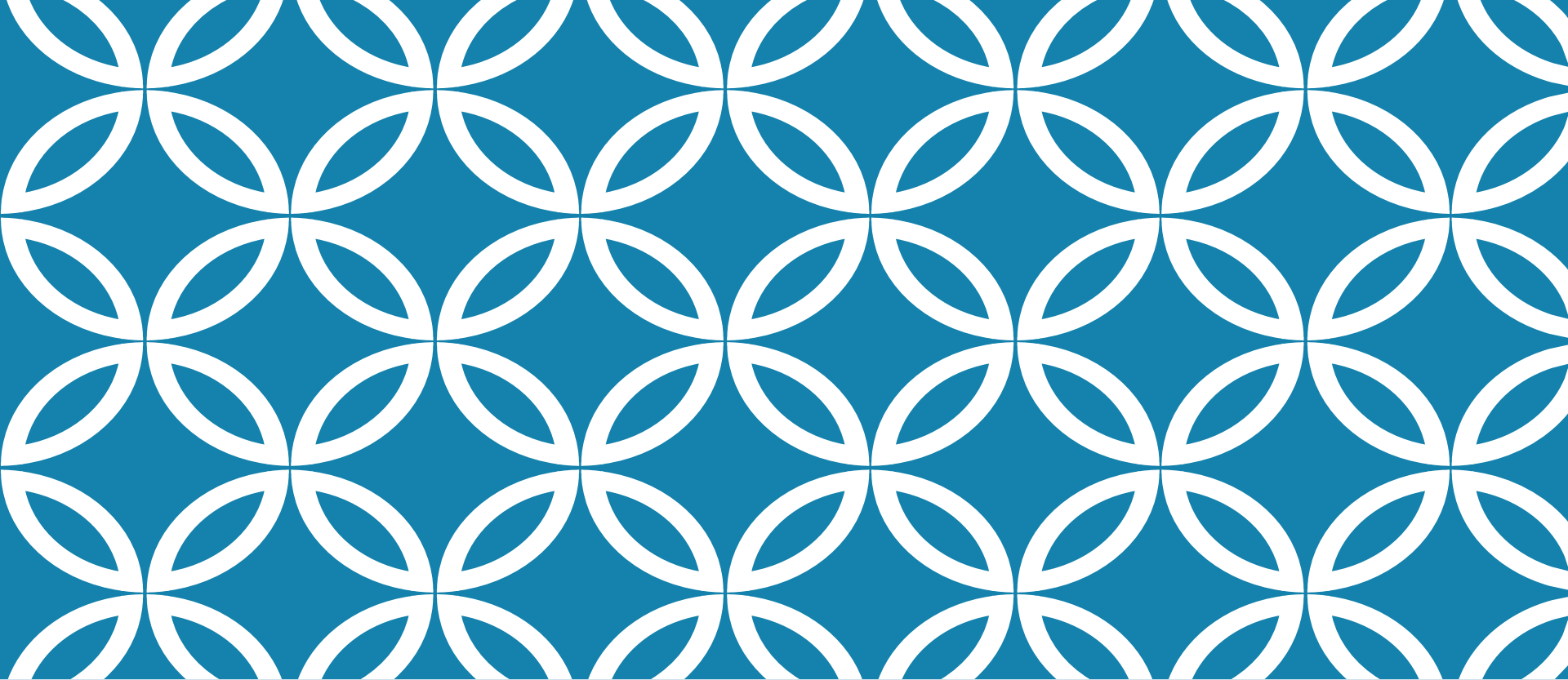
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UNDERSTANDING THE COMPLEX WORLD OF CAFETERIA & HEALTH REIMBURSEMENT PLANS

OVERVIEW OF SESSION

- HRA
- QSEHRA & ICHRA
- HRA
- HSA
- POP
- FSA/Limited Purpose FSA/DCAP
- Questions



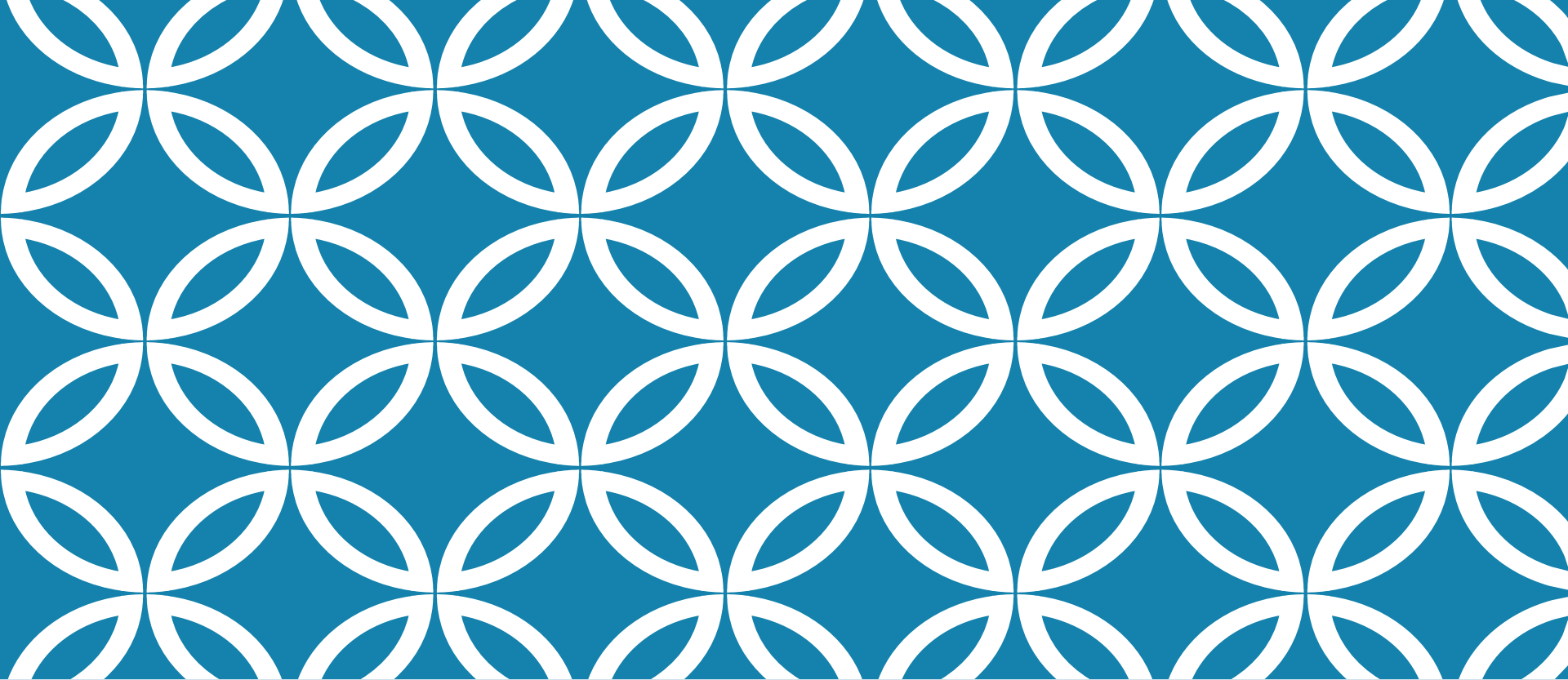
I. HEALTH REIMBURSEMENT ARRANGEMENT (HRA)

I. HRA PLANS OVERVIEW

- Health Reimbursement Accounts (HRA)
- Medical plan is generally a high deductible plan (sometimes an HSA-compatible plan); HRA is in addition to the medical plan
- Normally for small groups under 100; however, can be used by employers of any size with limitations
- Employer funded
- Funds are used to pay qualified medical expenses (not premium reimbursement) except ICHRA programs
- Funds do not carry over to the next Plan Year

I. HRA PLANS OVERVIEW-CONTINUED

- Can be as simple as a \$1,000 single/\$2,000 family debit card
- Need to have a Third-Party Administrator (TPA) to administer the program, verify the expenses, and assist with documentation
- Documentation required. These are considered ERISA benefits and must meet ERISA regulations including fiduciary duties
- Need to provide COBRA coverage if over 20 employees and COBRA eligible.



II. QSEHRA & ICHRA PLANS

II. QSEHRA & ICHRA PLANS OVERVIEW-CONTINUED

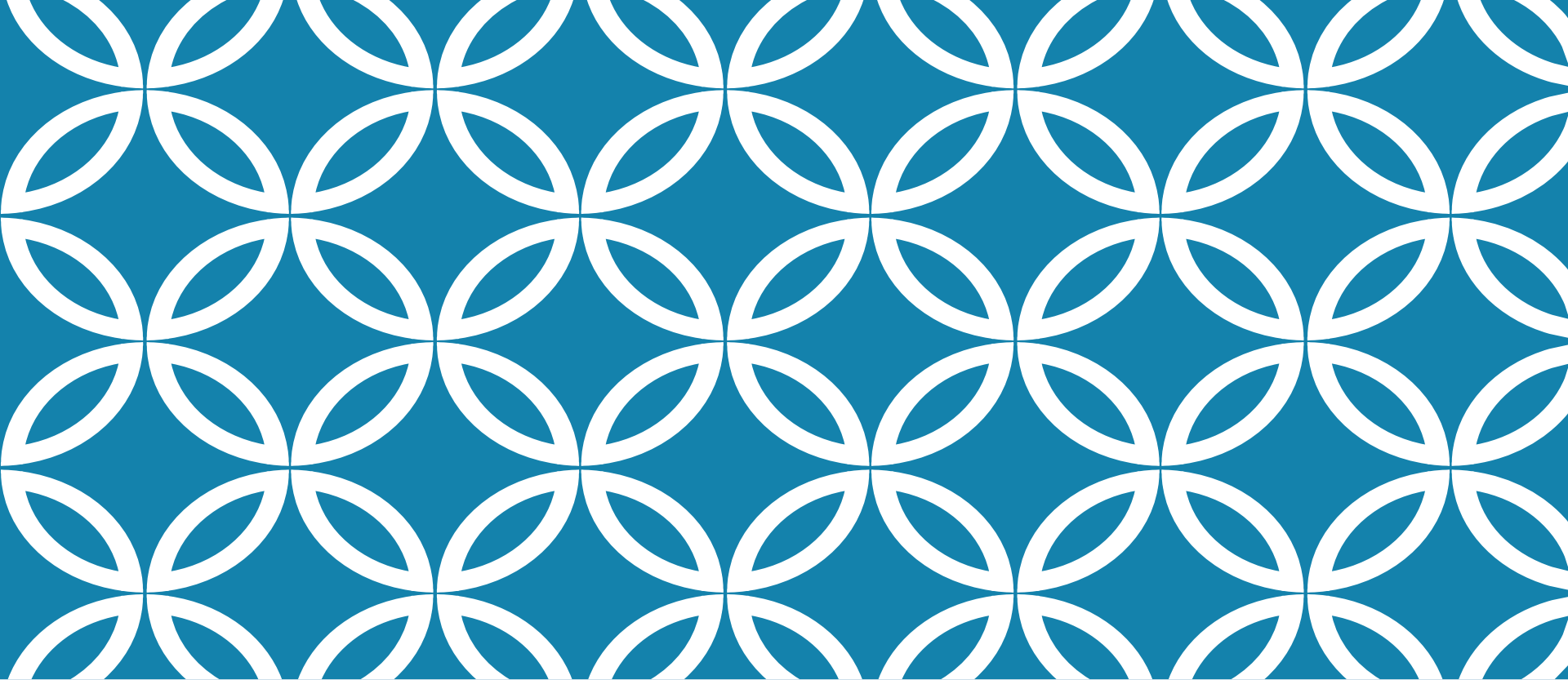
- Qualified Small Employer Health Reimbursement Arrangement (QSEHRA)
- In 2017 QSEHRAs became available for small employers with fewer than 50 employees who do not have a group health plan
- For 2023, the maximum allowed QSEHRA annual benefit is \$5,850 per employee electing individual and \$11,800 per employee electing family coverage (change from 2022 of \$5,450 and \$11,050 limits)
- QSEHRA offer the same benefits as ICHRA but limited to small employers only and limit how much an employer is allowed to reimburse an employee

II. QSEHRA & ICHRA PLANS OVERVIEW

- Individual Coverage Health Reimbursement Arrangement (ICHRA)
- Allows employers of any size to reimburse employees for some or all the premiums that the employees pay for health insurance that they purchase on their own (individual health plan)
- ICHRAs were created in 2019 and become available in 2020 as essentially an upgrade from QSEHRA plans
- Complex rules for affordability calculation if the employer is an Applicable Large Employer (ALE) with over 50 employees

II. QSEHRA & ICHRA PLANS OVERVIEW-CONTINUED

- There are no limits on how much an employer can reimburse under an ICHRA (unlike a QSEHRA, which does have limits)
- An employer cannot offer an employee a choice between a group health plan and an ICHRA; it has to be one or the other. An employer can offer both a group health plan and an ICHRA, but they have to be offered to different classes of employees so that employees do not have an option to choose between the group plan and the ICHRA.
- Need to provide COBRA coverage for ICHRA plans (as well as HRA programs) if over 20 employees and COBRA-eligible. QSEHRA plans, as an “excepted benefit” to the PPACA, are not subject to COBRA.



III. HEALTH SAVINGS ACCOUNT (HSA)

III. HSA PLANS OVERVIEW

- Health Savings Account (HSA) program created by the Medicare Modernization Act passed in 2003
- Medical plan must qualify as an HSA compatible High Deductible Health Plan (HDHP)
- For a plan to be HSA compatible, everything applies to the deductible except preventive services. In other words, NO Copay benefits for doctor visits, pharmacy, telemedicine, etc. until the calendar year medical deductible has been met
- Cannot contribute to an HSA checking account if the employee has Medicare or any other medical insurance plan

III. HSA PLANS OVERVIEW-CONTINUED

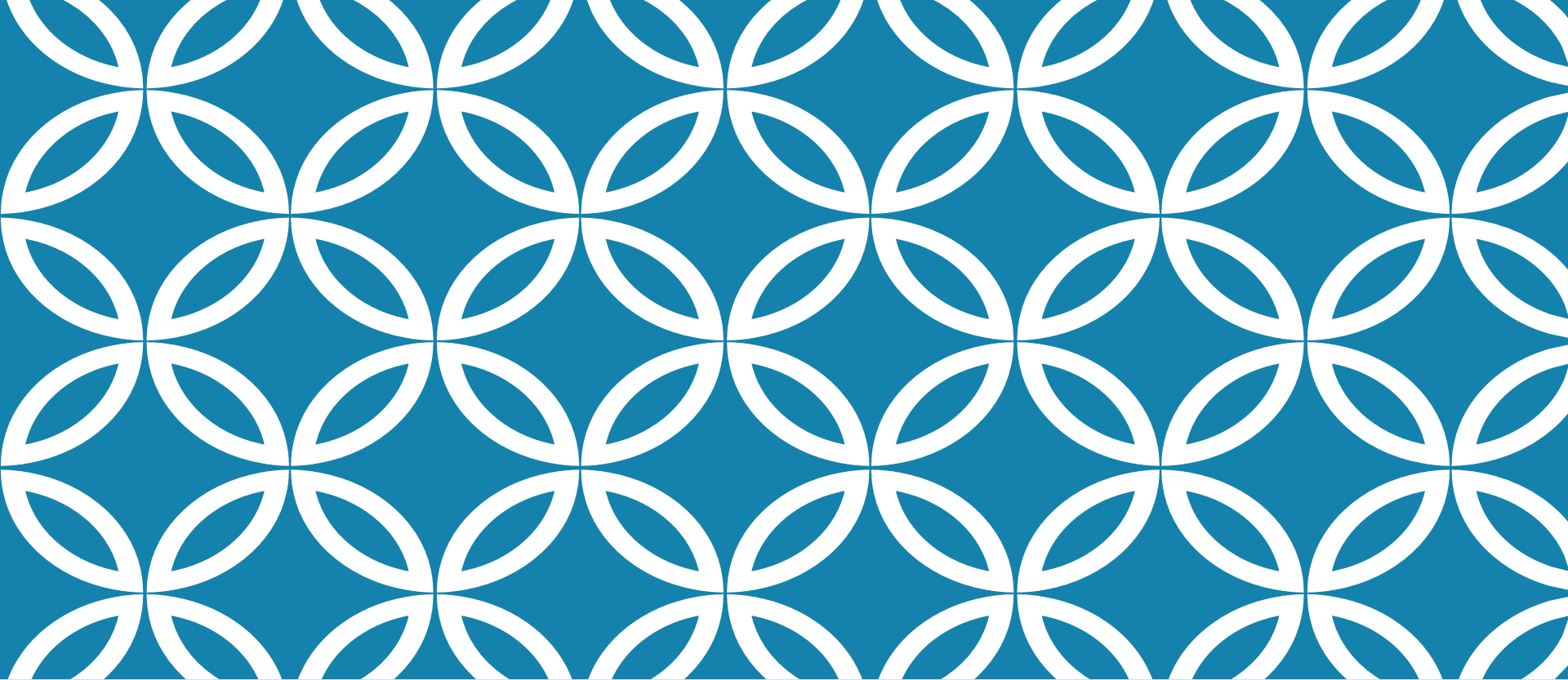
- Employer and/or Employee can fund to the annual TOTAL maximum amount
- 2023: \$3,850 Single/\$7,750 Family maximum on a pre-tax basis for employee contributions and employees are not taxed for employer contributions under Federal and Arizona law. Under California tax code there are no HSA tax benefits.
- Since an HSA can be contributed to by an employee, the HSA is a Cafeteria plan subject to IRS Section 125
- The employee establishes and owns the HSA checking account
- All funds immediately become property of the employee and can be carried over to the next year. NOT “use it or lose it”

III. HSA PLANS OVERVIEW-CONTINUED

- Checking account used to pay qualified medical expenses (IRS Publication 502)
- Very flexible timing allowed for qualified medical expenses reimbursement
- This is a tax law, and the employees must keep their HSA records as long as they keep their regular tax return records
- Since it is a tax law, ultimately it is the employee's responsibility to make sure the HSA money is being used for qualified medical expenses

III. HSA PLANS RECENT CHANGES

- Inclusion of specified over-the-counter (OTC) medical products as qualified expenses (also for FSA programs). Does not include OTC Covid tests
- Physician's prescription no longer required for processing reimbursements for OTC medication under the CARES Act (also for FSA and HRA programs)
- Menstrual care products are now considered qualified expenses (also for FSA programs)



IV. PREMIUM ONLY PLANS (POP)

IV. POP PLANS OVERVIEW

- Premium Only Plans (POP) allow employees to have their health plan contributions taken out of their paychecks on a pre-tax basis.
- Requires documents to be produced by a specialist, which normally include the FSA and DCAP programs
- One-time cost is low (\$250 if done by a professional specialist), although it is recommended to be updated every 5 years unless changes require it to be done sooner
- If the POP documentation is not available, then a set of documents may be created as “amend and restate.”
- Pre-tax contributions may reduce potential Social Security benefits, and that fact should be listed in the election form that employees sign at initial enrollment and at Annual Open Enrollment.
- Cannot “force” employees to elect pre-tax.

IV. POP PLANS OVERVIEW-CONTINUED

- Cafeteria programs give employees the option to select various types of medical, dental, vision, life, etc. programs. Usually combined with an FSA and DCAP program.
- Employees cannot change their election (elected amount) during the year unless they experience a qualifying change (Permitted Event) in family status, employment, or group health care coverage (as allowed by Federal law), as interpreted by the Plan Administrator. The Consistency Rule will apply.
- The Plan Administrator determines which Permitted Events will apply to the plan, and whether the applicable Permitted Event meets the Consistency Rule.
- Review of examples of Permitted Events

IV. POP PLANS CONSISTENCY RULE

Consistency Rule for Coverage Changes

- Applies to an employer with an IRS Section 125 Premium Only Plan
- The Consistency Rule stipulates that coverage changes must correspond with changes in status that affect eligibility for coverage.
- For example, if an employee has previously elected family coverage with a spouse and child, the birth of a child in the middle of the Plan Year would ***not*** be a qualifying event for him/her to drop coverage for the spouse and children. The birth of a child will only allow the employee to add the newborn.

IV. POP PLANS NON-DISCRIMINATION RULES

- Non-discrimination rules apply.
- Safe harbor non-discrimination testing



V. FSA/LIMITED PURPOSE FSA/DCAP

V. FSA/LIMITED PURPOSE FSA/DCAP OVERVIEW

- Flexible Spending Accounts (FSA) allow employees to set aside pretax money for qualified, unreimbursed medical or dependent care expenses through payroll deductions (DCAP). Although most FSAs are funded by employees, they can also be funded by employers.
- Employees choose how much money they want to contribute at the beginning of the plan year and cannot change the elections during the year unless a Permitted Event occurs.
- 46% of workers had access to a health FSA and 43% to a dependent care FSA in 2020
- Unused funds can potentially be forfeited at the end of the benefit year, however IRS regulations in recent years have been modified from the “use it or lose it” rule to allow more flexibility (carryover option), if adopted by the employer.

V. FSA/LIMITED PURPOSE FSA/DCAP OVERVIEW-CONTINUED

- The maximum amount for FSA medical reimbursement is determined by the employer, up to \$3,050 in 2023
- The maximum amount for DCAP dependent care reimbursement in 2023 is \$2,500 Filing Single/\$5,000 Married Filing Jointly.
- Standalone FSA plans (without an employer-sponsored medical plan) are not allowed by the PPACA
- Employers can contribute up to \$500 no-strings-attached, and can choose to match the employee's contribution up to 100% over \$500 up to a maximum of \$3,050 (\$6,100 combined) annual contributions in 2023
- Non-discrimination rules apply
- Need to provide COBRA coverage if over 20 employees and COBRA eligible

V. FSA/LIMITED PURPOSE FSA/DCAP CARRY OVER OPTION

- FSA Plans can be amended to allow one of two carryover methods:
 - Maximum carry over to the following year for 2023 is \$610 (up from \$570 in 2022), as long as the employee re-enrolls.
- OR
- Grace Period from January 1 to March 15th (2 months and 15 days)
- IRS regulations forbid FSA Plans from allowing both of the above carryover options
- DCAP carryover is not allowed, however there is a grace period from January 1 to March 15 of each year. (COVID-19 legislation permitted a carryover of unused balances into the next plan year for plan years 2020 and 2021 however that has since expired).

V. FSA/LIMITED PURPOSE FSA/DCAP LIMITED PURPOSE FSA PLANS

- Limited Purpose FSA Plans (LPFSA) typically will only cover qualified vision and dental expenses
- A LPFSA is compatible with an HSA program if it doesn't cover medical costs
- You cannot have a LPFSA and a Medical FSA at the same time

SOURCES

- ACA Numbers & Limits 2014 – 2023, Kaufman & Canoles, John M. Peterson November 10, 2022
- Change-In-Status Rules for Health Coverage Under a Section 125 Cafeteria Plan
- Emerson Reid 2022 Year in Review Compliance Digest: Compliance Bulletins, January – December 2022
- HHS, EBSA, EDD, IRS, CMS, CCIIO and other governmental agency websites

SOURCES

- Individual Coverage Health Reimbursement Arrangement (ICHRA):
What is an individual coverage health reimbursement arrangement (ICHRA), [healthinsurance.org](https://www.healthinsurance.org), 2023
- Prescriptions No Longer Needed for Over-the-Counter Drug Purchases with FSAs, HRAs and HSAs, MedBen [health.benefits](https://www.healthbenefits.com), April 7, 2020
- [Wikipedia.org/Health Savings Accounts](https://www.wikipedia.org/Health_Savings_Accounts)

NOTES

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QUESTIONS?



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