

IRS Makes Face Masks and Sanitizer Payable Under FSAs, HSAs or HRAs

Deadline for 2020 HSA contributions extended to May 17, 2021

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The IRS cleared up an issue about benefit account reimbursements for nonprescription, over-the-counter personal protective equipment (PPE) that has been a source of confusion since the start of the COVID-19 pandemic.

In Announcement 2021-7 (<https://www.irs.gov/pub/irs-drop/a-21-07.pdf>), issued March 26, the IRS clarified that purchases of PPE such as face masks, hand sanitizer and sanitizing wipes, for the primary purpose of preventing the spread of coronavirus, "for use by the taxpayer, the taxpayer's spouse, or the taxpayer's dependents that are not compensated for by insurance" are deductible from income for tax purposes, "provided that the taxpayer's total medical expenses exceed 7.5 percent of adjusted gross income."

As tax-deductible expenses, the amounts paid for PPE are also eligible to be paid or reimbursed under health flexible spending arrangements (health FSAs), health savings accounts (HSAs) or health reimbursement arrangements (HRAs). However, if an amount is paid or reimbursed under a health FSA, HSA, HRA or any other health plan, it is not deductible for tax purposes.

Separately, the IRS delayed until May 17 the deadline to make 2020 prior-year contributions to HSAs and other individually owned tax-advantaged accounts (see the box below).

Long-Awaited Guidance

"During the current public health crisis, consumers were shocked to find that the very products recommended by the U.S. Centers for Disease Control and Prevention as protection against the spread of COVID-19 were not widely eligible for purchase with FSA or HSA funds," according to Health-E Commerce, a consumer health and wellness advocate and online retailer.

"Announcement 2021-7 is the culmination of a year-long campaign ... to correct this gap in FSA/HSA product eligibility (https://www.prweb.com/releases/health_e_commerce_applauds_new_irs_guidance_making_masks_hand_sanitizer_and_sanitizing_wipes_fsa_hsa_eligible/prweb17834376.htm)," the firm said in a statement, which noted that proposed bipartisan legislation to allow for PPE to be FSA/HSA eligible, and which featured similar provisions to those in Announcement 2021-7, had failed to advance through Congress. However, "this change, unlike previous bills introduced by Congress, is not tied to a state of emergency and [is] a permanent change to eligibility," Health-E Commerce said.

"The IRS has finally weighed in (<https://www.beneficiallyyours.com/2021/03/26/yes-your-health-fsa-can-cover-your-surgical-mask-purchase/>) ... allowing [PPE] to be treated as qualifying medical expenses under Internal Revenue Code Section 213," wrote Diane Dygert, a partner in the Chicago office of law firm Seyfarth. "To the extent these health care arrangements have been permitting these reimbursements already, this announcement provides welcome confirmation," she noted. "Other plan sponsors may want to use this opportunity to review the rules for their FSAs and HRAs to determine if they should be expanded to specifically allow for reimbursements for these PPE purposes."

Amending Plan Documents

Feedback

Health FSAs and HRAs may be amended retroactive to Jan. 1, 2020 or any period beginning afterward, the IRS said, as long as the amendment is in place before the end of the calendar year following the year for which the change is effective—for example, by Dec. 31, 2021, for a change effective Jan. 1, 2020, Dygert explained. No retroactive amendment may be adopted later than Dec. 31, 2022.

HSAs are not employer-sponsored group plans requiring employers to amend a plan document. Instead, they are individually owned accounts offered through an HSA provider firm.

Action by Service Providers and Retailers

"This is great news for [health FSA], HRA and HSA participants (<https://www.tri-ad.com/blog/irs-announces-ppe-as-qualified-medical-expense/>)," blogged Chris Johnson, sales and marketing specialist at TRI-AD, an employee benefits administration firm based in Escondido, Calif. "Most service providers will work quickly to update the list of eligible expenses to include these items."

In addition, pharmacies and retailers must update their software systems to show that PPE products are now eligible for payment through tax-advantaged benefit accounts.

"Stores vary on how often they update their eligible expense items, some monthly, quarterly or annually," Johnson noted. "Until the stores have updated their eligible expense lists, benefits debit cards will not approve these types of expenses."

Benefit account participants, however, "can submit manual claims with appropriate receipts," he pointed out. "The receipts should clearly specify the items that were purchased for the expense to be eligible for reimbursement."

Advised Health-E Commerce, account holders "should check with their HR department or benefits provider to make sure that these expenses will be eligible with their plan."

Steps for Plan Sponsors

"If you want to cover PPE expenses, (<https://www.nixonpeabody.com/en/ideas/blog/benefits/2021/03/30/fsas-hras-and-hsas-may-reimburse-ppe-expenses>)you should work with your vendors to determine how to implement the change," advised Yelena F. Gray and Eric Paley, partners at law firm Peabody Nixon in Chicago and Rochester, N.Y., respectively. "If you want the amendment to be retroactive, mark the deadline on your calendar and work with legal counsel to ensure timely adoption."

To help employees take advantage of the new rules, "you will need to put together a suitable communications campaign," Gray and Paley suggested. "If you have already closed the run-out period for submitting 2020 claims, you will need to reopen that run-out period."

IRS Extends 2020 Contribution Deadline for HSAs

The IRS extended the 2020 federal income tax-filing deadline by one month, from April 15 to May 17, 2021 (as May 15 is a Saturday). The extension also delays until May 17 the deadline to make 2020 prior-year contributions to health savings accounts (HSAs), and to individual retirement accounts (IRAs) and Coverdell education savings accounts (Coverdell ESAs) as well, the IRS said March 29 in IRS Notice 2021-21 (<https://www.irs.gov/pub/irs-drop/n-21-21.pdf>).

Any contributions to an HSA, IRA or Coverdell ESA, when made for the prior year through that year's income tax-filing deadline, should be clearly indicated as such to avoid confusion. If these contributions are not marked for the prior year, the account's custodian may report it as being for the current year.

The 2020 HSA contribution limits are \$3,550 for HSAs linked to self-only high-deductible health plans (HDHPs), and \$7,100 for HSAs with family coverage HDHPs, plus an additional \$1,000 catch-up contribution for those 55 or older during the year. The annual limits for 2021 are \$3,600 (self-only) and \$7,200 (family), plus a \$1,000 catch-up contribution.

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IRS Clarifies Relief for FSA Carry-Overs (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/IRS-guidance-clarifies-relief-for-FSA-carry-overs.aspx), *SHRM Online*, March 2021

IRS Announces 2021 Limits for HSAs and High-Deductible Health Plans (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/irs-2021-hsa-contribution-limits.aspx), *SHRM Online*, May 2020

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