

Publications

Treasury Guidance Restricts Use of Health Savings Account (HSA) with Health Flexible Spending Arrangement (FSA) and/or Health Reimbursement Arrangement

ATTORNEYS & PROFESSIONALS

Christine Kellerckeller@groom.com

202-861-9371

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On May 11, 2004, Treasury and IRS issued the eagerly awaited Rev. Rul. 2004-45, which describes the circumstances under which an individual who is eligible to make contributions to a health savings account (HSA) may also participate in a health flexible spending arrangement (FSA) (usually offered as part of a Code section 125 cafeteria plan) and/or a health reimbursement arrangement (HRA) (described in Notice 2002-45 and Rev. Rul. 2002-41).

Commentators were hopeful that the IRS would broadly interpret the new HSA statutory language (Code section 223), which requires that an HSA-eligible individual participate in a high deductible health plan, and generally prohibits that individual from participating in any other non-high deductible health plan that provides coverage for benefits covered under the high deductible health plan. The HSA statute contains exceptions to this rule for non-high deductible health plans that provide coverage for accidents, disability, dental care, vision care, long-term care services, or certain types of “permitted insurance,” which includes insurance for a specified disease or illness, and insurance paying a fixed amount per day (or other period) of hospitalization. In addition, the HSA statute provides that benefits that satisfy the definition of “preventive care” (set forth in Notice 2004-23, April 7, 2004) may be provided without a deductible.

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