McGOHAN BRABENDER'S
COMPLIANCE ALERT

DECEMBER 2025

IRS Guidance on HSA Changes under OBBB

IRS Notice 2026-5 provides guidance on new flexibilities made to health savings accounts (HSAs) by the One, Big, Beautiful Bill Act (OBBB), signed into law July 4, 2025.

WHO THIS APPLIES TO:

- Employers of any size allowing employees to contribute to a health savings account (HSA).

Go Deeper:

The OBBB made four substantial changes with respect to HSAs:

1. Permanently allows HSA-eligible employees to access telehealth and other remote care services before the deductible, retroactive to the start of 2025
2. Treats bronze and catastrophic individual plans available in the Exchange as compatible with HSAs without regard for HDHP rules, starting in 2026
3. Allows certain direct primary care (DPC) service arrangements meeting cost and service restrictions to be compatible with contributing to an HSA, starting in 2026
4. Allows DPCs to be reimbursable from HSAs, starting in 2026

Telehealth Guidance

Telehealth compatibility with HSAs was offered by Congress during the pandemic due to how difficult it was to see a doctor in person. Congress provided a few temporary extensions after the pandemic, but plan years starting in 2026 no longer had that flexibility and were supposed to charge a fair market value for non-preventive telehealth care until the federal minimum deductible is met.

The IRS clarifies that since the law extended permanent telehealth compatibility with HSAs retroactively to the start of 2025, telehealth coverage the first half of the year that failed to charge a fair market value was not disqualifying coverage for HSA purposes after all.

The IRS also offered clarity on the scope of telehealth and other remote care services which an HDHP can provide before the deductible. The federal government publishes a list of telehealth services covered by Medicare deemed automatically allowable, and for anything not on that list *"taxpayers should apply the principles of section 1834(m) of the [Social Security Act], its implementing regulations at 42 CFR 410.78, and other guidance issued by HHS."* If any telehealth or other remote care services result in a need to get in-person care, equipment, or drugs, those follow-up services are not considered part of the telehealth exception and thus are subject to HDHP and HSA eligibility rules.

Bronze and Catastrophic Plan Guidance

For employers sponsoring an individual coverage health reimbursement arrangement (ICHRA), guidance points out that the ICHRA must reimburse only premiums and not medical expenses for the employee to not have disqualifying HRA coverage for HSA purposes. For §125, the employer must get an attestation from the employee that they have HSA-compatible individual market coverage with no other disqualifying coverage before allowing pre-tax paycheck deductions and/or employer contributions to an HSA.

Starting in 2026, employees can select a bronze or catastrophic plan on or off the Exchange as HSA-compatible coverage. For off-Exchange bronze or catastrophic plans, as long as the individual has no reason to believe the coverage is not offered on the Exchange, the IRS will not require the employee or employer to verify whether that specific plan is sold in the Exchange. This is welcome news for employers who allow employees to make pre-tax paycheck deductions under their §125 cafeteria plan for off-Exchange individual health insurance premiums.

Guidance also notes an individual with bronze coverage who receives care at an Indian Health Services (IHS) facility will not be treated as having disqualifying coverage for the three months following that service. However, those with an HDHP continue to be treated as disqualified for the three months following care at an IHS facility.

Direct Primary Care (DPC) Guidance

The law established some cost and services restrictions for HSA-compatible DPCs starting in 2026:

- Must be comprised of "primary care practitioners" providing "primary care services," which cannot include services requiring general anesthesia, drugs other than immunizations, or labs not typically provided in an ambulatory care setting; and
- Must include those services solely paid for with a fixed periodic fee which cannot exceed $150 per month (double for a family), to be indexed annually after 2026.

In the new December 9th guidance, the IRS clarifies that the fixed periodic fee does not have to be charged monthly. It can be any period up to a year, as long as the equivalent fee does not exceed what is allowed for that year. Also, the fee can be paid shortly before the period of coverage (e.g., the 2026 DPC annual membership fee can be paid in December 2025). So, a quarterly fee of $450 or annual fee of $1,800 is allowable (double for a family).

The DPC provider is also allowed to provide additional services for an extra fee beyond what the DPC membership includes, so long as the DPC fee only covers allowable services under the cost limits.

Some pieces of the notice address employer interaction with DPCs but leave many questions to be answered:

- The DPC membership fee cannot be counted toward meeting the HDHP deductible, so it cannot be incorporated into the HDHP.

- Likewise, employees who make pre-tax paycheck deductions for DPC fees under a §125 Cafeteria plan or have employers pay for the DPC fee cannot submit those same expenses to the HSA *(i.e., cannot double dip)*.
- The guidance also potentially seems to suggest that employers may not be able to sponsor or pay for the DPC without making the DPC disqualifying coverage. *(More analysis from the IRS would be welcome on this last concept.)*

Finally, guidance clarifies that while there are cost and service restrictions for the DPC to be HSA-compatible, the law did not apply those cost and service restrictions for determining which DPC fees are *reimbursable* from HSAs. Therefore, while a non-compatible DPC membership may be disqualifying coverage for *contributing* to an HSA, the fee is nevertheless reimbursable from the HSA. This may be helpful for family members who join a specific DPC that does not comply with the cost/service rules but the employee chooses a compatible DPC on their own, or for using HSA funds tax-free for a more robust DPC arrangement in retirement.

Employer Considerations:

The IRS is requesting comments on the guidance and anything else they should address. Employers may continue to offer first-dollar telehealth to their employees enrolled in an HDHP. Employers sponsoring an HDHP and offering employees any type of access to a DPC should consult with their service providers and legal counsel to ensure that the DPC coverage is narrowly designed in a manner that allows employees to maintain their HSA eligibility.