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Ask Ms. Medicare

Can I Have a Health Savings Account as Well as Medicare?

No, but understanding the details of this IRS rule may help you get around it

by Patricia Barry, AARP Bulletin, Updated April 2014

Q. I have health insurance from my employer in the form of a Health Savings Account. But I'm told I can't use it if I'm eligible for Medicare. Is this correct? If so, what can I do to keep this insurance if I continue working after age 65?

A. A Health Savings Account (HSA) is a type of health insurance offered by an increasing number of employers. It combines a high-deductible health plan with a tax-free health savings account to which the employee and the employer can contribute. (It is not the same as a Medicare Medical Savings Account, a health plan available only to Medicare beneficiaries, which is not discussed in this article.)

IRS rules say that you can't contribute to an HSA if you're enrolled in Medicare. You can draw on funds already in the account but you can't add to them. So it's important to know how you can get around this rule if you have an HSA at work and want to continue working beyond age 65. Here's what you can do, according to different situations:

- If you're eligible for Medicare *but have not filed an application for either Social Security retirement benefits or Medicare*, you need do nothing. As long as your employer has 20 or more employees, you have the right to postpone applying for Social Security and Medicare — and therefore can continue to contribute to your HSA — until you stop working. There is no penalty for this delay, , and when your employment ends you're entitled to a special enrollment period to sign up for Medicare. (For more details, see the related article "Medicare When Working Beyond 65.")

Next: What if you're covered under your spouse's HSA at work? »

- If you're entitled to Medicare because you signed up for Part A at age 65 or later (perhaps not realizing that it can affect the use of your HSA) *but have not yet applied for Social Security retirement benefits*, you can withdraw your application for Part A. (To do so, contact the Social Security Administration at 1-800-772-1213.) There are no penalties or repercussions and you are free to reapply for Part A at any future date.
- But *if you have applied for, or are receiving, Social Security benefits*—which automatically entitles you to Part A—you cannot continue to contribute to your HSA. And in these circumstances, the only way you could opt out of Part A is to pay back to the government all the money you've received in Social Security payments, plus everything Medicare has spent on your medical claims. You must repay these amounts before your application to drop out of Part A can be processed. If you take this action, you're no longer entitled to Social Security or Medicare—but you can reapply for both at any time in the future (for example, if you end or lose your HSA coverage).

Ask Ms. Medicare

Patricia Barry, AARP Medicare expert.

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What if you are covered under your spouse's health savings account at work? The IRS rule affects only employees age 65 or older who have HSAs through their employment, because they are the ones who contribute to HSAs from their before-tax earnings at work. The rule does not affect covered spouses over age 65, who can continue to use funds from the working spouse's HSA for approved medical purposes.

What if you received Medicare Part A under age 65 through disability? In this situation, you're entitled to Medicare as soon as you've received your 25th disability check from Social Security. In other words, you automatically go into the Medicare system. If you're able to return to work, eventually your disability payments will stop—but your Medicare entitlement continues for up to 93 months from the time you first applied for disability. For most people, this is an advantage. But if your employer offers health insurance in the form of a health savings account, you're ineligible to take it because you have Medicare. Again, the only way you can opt out of Part A is to repay Social Security for all the disability payments you've received, even if you've never used Medicare for medical services, and to repay Medicare for any services that you have used. Most people with disabilities simply could not afford to make those repayments.

This situation was the focus of a lawsuit that alleged that denying Social Security benefits to people who wish to opt out of Part A is unlawful and unconstitutional. On February 7, 2012, a federal court of appeals rejected plaintiffs' arguments and ruled that "there is no statutory avenue for those who are 65 or older and receiving Social Security benefits to disclaim their legal entitlement to Medicare Part A benefits."

Some members of Congress have introduced bills that would allow people to opt out or suspend their Part A entitlement without affecting their Social Security payments, but none of these has yet passed into law.

Warning for when you retire: You cannot contribute to an HSA in any month that you are enrolled in Medicare. And there's a pitfall inherent in that rule that you need to be aware of. When you finally sign up for Social Security retirement benefits—probably when you're on the point of retirement—and if you're already at least six months beyond your full retirement age (currently 66)—Social Security will give you six months of "back pay" in retirement benefits. It's a generous gesture, but it means that your enrollment in Part A will also be backdated by six months. Under IRS rules, that leaves you liable to pay six months' of tax penalties on your HSA. To avoid the penalties, you need to stop contributing to your account six months before you apply for Social Security retirement benefits.

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Health Savings Accounts (HSAs) and Medicare

Health Savings Accounts (HSAs) are accounts for individuals with high-deductible health plans (HDHPs). Funds contributed to an HSA are not taxed when put into the HSA or when taken out, as long as they are used to pay for qualified medical expenses. Your employer may oversee your HSA, or you may have an individual HSA that is overseen by a bank, credit union, or insurance company.

If you have an HSA and will soon be eligible for Medicare, it is important to understand how enrolling in Medicare will affect your HSA.

High-deductible health plans

In order to qualify to put money into an HSA, you must be enrolled in a high-deductible health plan. HDHPs have large deductibles that members must meet before receiving coverage. This means HDHP members pay in full for most health care services until they reach their deductible for the year. Afterwards, the HDHP covers all the member's costs for the remainder of the year.

Enrolling in Medicare when you have an HSA

If you enroll in Medicare Part A and/or B, you can no longer contribute pre-tax dollars to your HSA. This is because to contribute pre-tax dollars to an HSA you cannot have any health insurance other than an HDHP. The month your Medicare begins, your account overseer should change your contribution to your HSA to zero dollars per month. However, you may continue to withdraw money from your HSA after you enroll in Medicare to help pay for medical expenses, such as deductibles, premiums, copayments, and coinsurances. If you use the account for qualified medical expenses, its funds will continue to be tax-free.

Whether you should delay enrollment in Medicare so you can continue contributing to your HSA depends on your circumstances. If you work for an employer with fewer than 20 employees, you may need Medicare in order to have primary insurance, even though you will lose the tax advantages of your HSA. This is because health coverage from employers with fewer than 20 employees pays secondary to Medicare. If you work at this kind of employer and fail to enroll in Medicare, you may have little or no health coverage because your health plan does not have to pay until after Medicare pays. Health coverage from an employer with 20 or more employees pays primary to Medicare, so you may choose to delay Medicare enrollment if you work at this kind of employer and continue putting funds into your HSA.

Note: In either case, you have access to the Part B Special Enrollment Period (SEP) when you lose coverage or retire.

If you choose to delay Medicare enrollment because you are still working and want to continue contributing to your HSA, you must also wait to collect Social Security retirement benefits. This is because most individuals who are collecting Social Security benefits when they become eligible for Medicare are automatically enrolled into Medicare Part A. You cannot decline Part A while collecting Social Security benefits. The takeaway here is that you should delay Social Security benefits and decline Part A if you wish to continue contributing funds to your HSA.

Finally, if you decide to delay enrolling in Medicare, make sure to stop contributing to your HSA at least six months before you do plan to enroll in Medicare. This is because when you enroll in Medicare Part A, you receive up to six months of retroactive coverage, not going back farther than your initial month of eligibility. If you do not stop HSA contributions at least six months before Medicare enrollment, you may incur a tax penalty.

If you require counseling around HSAs, consult a tax professional.