

February 28, 2022

To: Benefit Administrators / Human Resource Personnel

**From: Alana Shearer-Kleefeld
Director, Employee Benefits**

**Re: Change to the Annual Forfeiture Process for the Out-of-Scope Flexible Spending Plan
Employee Benefit Plans**

On June 29, 2021, Bill 30, which included changes to the Employee Life and Health Trust (ELHT) provisions of the Income Tax Act, came into force. The ELHT conversion rules require the Out-of-Scope Flexible Spending Plan (OOS FSP) to make the election to ELHT on or before the first income tax filing due date after 2021.

One of the fundamental principles of a Trust is that money cannot be returned to the employer. In past years, 3sHealth completed an annual forfeiture of unused allocations for both the Lifestyle Spending Account (LSA) and Health Care Spending Account (HSA). Unused HSA funds were returned to participating employers at the end of each year. In order for the OOS FSP to be tax compliant, a change to the annual forfeiture process is required.

Background of the OOS FSP

LSA claims are adjudicated by 3sHealth. LSA funds are retained by the employer. A monthly file of approved reimbursements is sent to each participating employer. The employer then reimburses the employee through payroll so applicable payroll taxes can be taken.

LSA is a taxable benefit. The calculation of forfeiture for any unused allocations occurs after 1 year. Example: unused allocations for 2020 were calculated and the employer is advised of the unused amount remaining on March 1, 2021. There is no money actually returned to the employer; they are only advised of the unused allocation amount remaining because the employer holds the funds.

HSA is a non-taxable benefit. The employer pre-funds the HSA allocations in January each year. The money is held by 3sHealth in the Trust. 3sHealth issues payment to Canada Life on a monthly basis for the actual cost of HSA claims incurred in the month plus an administrative services only (ASO) fee. The forfeiture of any unused allocations occurs after 2 years. Example: unused allocations for 2019 were forfeited back to the employer in April 2021.

HSA claims are adjudicated by Canada Life who reimburses the plan member by direct deposit or cheque. Expenses are coordinated with extended health care and dental coverage at the point of claim.

What is Changing?

In order for the OOS FSP to be ELHT compliant, changes to the annual forfeiture process are required.

Employers will continue to be invoiced quarterly by 3sHealth for HSA contributions.

Instead of the annual employer forfeiture return, unused HSA funds will be retained by the Trust and used to reduce the next year's HSA contribution amount from the employer.

- Example: the January 1, 2022 HSA annual contribution invoice for Employer 1 is calculated at \$27,303. At the end of 2021, the actuary completes an analysis that shows there is \$4,020 in expected forfeiture from 2020 for Employer 1.
- Therefore Employer 1's January 1, 2022 HSA annual contribution invoice will be \$23,283 ($\$27,303 - \$4,020 = \$23,283$).
- A true-up will occur on the next quarterly invoice once the actual amount of forfeiture is known following the annual claims submission deadline of March 1, 2022.
- All other administration by 3sHealth will continue as normal.

By no longer forfeiting money back to the employers, this will allow the OOS FSP to meet the ELHT criteria and remain compliant with the Income Tax Act. Governance will continue to be carried out by the Employee Benefit Plans Board of Trustees.

If you have any questions about the changes to the annual forfeiture process for the Out-of-Scope Flexible Spending Plan, please contact Alana Shearer-Kleefeld at 306.347.5599 or alana.shearer-kleefeld@3shealth.ca