DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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OFFICE OF THE CHIEF COUNSEL

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The Honorable Chris Gibson
Member, U.S. House of Representatives
4254 Albany Post Road
Hyde Park, NY 12538

Attention:

Dear Representative Gibson:

I am responding to your inquiry dated October 24, 2016, on behalf of . contacted you because when they enrolled in Medicare, their enrollment was retroactive, which made them ineligible to contribute to their health savings account (HSA) for that period. They are concerned the IRS will penalize them for contributing to their HSA while they were enrolled in Medicare.

Individuals who delayed applying for Medicare and were later covered by Medicare retroactively to the month they turned 65 (or six months if later) cannot make contributions to the HSA for the period of retroactive coverage. There are no exceptions to this rule. However, if they contributed to an HSA during the months that were retroactively covered by Medicare and as a result had contributions in excess of the annual limitation, they may withdraw the excess contributions (and any net income attributable to the excess contribution) from the HSA. They can make the withdrawal without penalty if they do it by the due date for the return (with extensions). In addition, an individual generally may withdraw amounts from an HSA after reaching the age for Medicare eligibility without penalty. (However, the individual must include both types of withdrawals in income for federal tax purposes to the extent the amounts were previously excluded from taxable income.)

If an excess contribution is not withdrawn by the due date of the federal tax return for the taxable year, it is subject to an excise tax under section 4973 of the Code. This tax is intended to recapture the benefits of any tax-free earning on the excess contribution.

As we understand the Medicare rules, the Medicare Part A coverage begins the month an individual turns age 65, provided the individual files an application for Medicare Part A (or for Social Security or Railroad Retirement Board benefits) within 6 months of the month in which the individual becomes age 65. If the individual files an application more than 6 months after turning age 65, Medicare Part A coverage will be retroactive for 6 months.

For HSAs, section 223(b)(7) of the Internal Revenue Code (Code) states that an individual may not contribute to an HSA for months the individual is entitled to benefits under Medicare. This is because the ability to contribute to HSAs is limited to individuals whose only coverage is provided through a high deductible health plan (HDHP). The HSA is then available to help pay for the medical expenses incurred before the deductible is satisfied. If an individual has coverage that is not subject to the full deductible of the HDHP (other than coverage for preventive care), even if retroactive, the individual is not allowed to contribute to the HSA.

I hope this information is helpful. If you have any questions, please call me at or at .

Sincerely,

Christine Ellison, Acting Chief
Health and Welfare Branch
Office of Associate Chief Counsel
(Tax Exempt and Government Entities)