
Health Care Law is Like Fashion - What's Out is in Again: New Rules on Health Reimbursement Accounts

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497 pages of final regulations were issued by the Internal Revenue Service, Department of Labor and the Department of Health and Human Services (collectively, the “Departments”) on June 20, 2019. These regulations made substantial changes to health reimbursement accounts (“HRAs”) and introduced two new types of HRAs: Individual Coverage HRAs and Excepted Benefit HRAs. The most important new HRA is the Individual Coverage HRA. These final regulations are effective as of January 1, 2020.

An HRA is an employer-funded group health plan that reimburses employees and their dependents for medical care expenses they incur on a tax-free basis, up to certain dollar limits. An HRA cannot satisfy certain requirements under the Affordable Care Act (“ACA”). Thus, the Departments have previously required that an HRA be integrated (combined) with other coverage that satisfies the ACA. This plan integration has been required since January 1, 2014. These new regulations change the integration requirements.

Individual Coverage HRA

The new regulations permit employers to offer a new Individual Coverage HRA (“ICHRA”) as an alternative to traditional group health plan coverage, subject to certain conditions. Among other medical care expenses, an ICHRA can be used to reimburse premiums for individual health insurance chosen by the employee, promoting employee and employer flexibility, while also maintaining the same tax-favored status for employer contributions towards a traditional group health plan.

Under the new regulations, an ICHRA must meet the following requirements:

1. **Employee Must Enroll in Individual Coverage.** The HRA must require that the participant and any eligible dependents be enrolled in individual health insurance coverage (including fully insured student health insurance)

or Medicare Part A and Part B or Part C (Medicare Advantage) for any month in which the individual HRA coverage applies. The individual coverage cannot be coverage that is limited to excepted benefits, such as dental or vision care, nor will enrollment in short-term limited duration insurance coverage or health care sharing ministry coverage satisfy this requirement.

Employer Contributions. Employers can contribute as little or as much as they want to an ICHRA. However, an employer must offer the HRA on the same terms to all employees in a class of employees, except that employers can increase the amount available under an ICHRA based on the employee's age or number of dependents. The HRA can be designed to reimburse all or a portion of the health insurance premiums. The HRA can also be designed to reimburse qualified medical expenses in addition to the health insurance premiums. An applicable large employer who is subject to the employer mandate will be able to satisfy its offer of coverage to full-time employees with an individual coverage HRA. Additional "affordability" guidance is expected.

- 2. Employee Classes.** Although the rules allow employers to offer the ICHRA to select employee classes (or a combination of classes), the ICHRA must be made available to all employees within that class (or combination of classes). The new regulations only allow the following classes:

Full-time

Part-time

Salaried

Non-salaried

Seasonal

Unionized employees (which can be as narrow as those covered by a particular bargaining agreement)

Employees who have not satisfied the group health plan's waiting period

Non-resident aliens with no U.S.-source income

Temporary employees who are part of a temp agency (if the temp agency is offering the individual coverage HRA)

Employees whose primary employment site(s) is (are) in the same insurance rating area (as defined by the ACA)

Employees cannot be offered both the ICHRA and a group health plan. It has to be one or the other.

- 3. Minimum Class Sizes.** The class of employees offered the ICHRA generally must satisfy the following minimum size requirements only if the employer also offers a traditional group health plan:

For employers with fewer than 100 employees, the class must be at least 10 employees

For employers with 100 to 200 employees, the class must be at least 10% of the employees

For employers with more than 200 employees, the class must be at least 20 employees

The minimum class size requirements only apply to the employees receiving the ICHRA, not any traditional group health plan. For locations, the minimum class size only applies if the location is smaller than a state.

Moreover, an employer's size is based on EIN, not IRS controlled group rules. The class size is determined based on the expected number of employees on the first day of the plan year of the ICHRA.

- 4. Notice Requirements.** A notice must be given to all eligible ICHRA employees at least 90 days before the beginning of the plan year. Among other requirements, the notice must let the employee know that they cannot receive a premium tax credit or government subsidy for individual coverage if they take the HRA and they may still not be able to get the subsidy even if they opt-out of the HRA.
- 5. Using a Section 125 POP to Pay Balance of Premium.** Just like with standard employer group health insurance, most employees will also contribute to the premium for individual health coverage. Unless the individual health coverage policy is purchased through an exchange, the employer may allow these employee payments to be made with pre-tax

employee dollars through the company's Section 125 plan. The pre-tax salary reduction will be applied through regular payroll deductions, and the employer will send the amount for premium payment to the individual health coverage insurer.

Excepted HRAs

The new regulations also allow excepted benefit HRAs. This new type of HRA allows an employer to reimburse up to \$1,800 per year for premiums for excepted benefits paid by employees and their dependents. The premiums must be for coverage under a dental or vision plan, short term limited duration plans, or plans offered by another employer. An employee cannot be offered an excepted benefit HRA and an ICHRA simultaneously. An employee's eligibility for an excepted benefit HRA, will not disqualify the employee from accessing Premium Tax Credits from an ACA exchange or marketplace.

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