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Overview of New Health Reimbursement Arrangements

Agenda

I. Introduction: Individual Coverage Health Reimbursement Arrangements (HRAs) and other types of HRAs
II. Individual Coverage HRA: Impact on Premium Tax Credit (PTC) Eligibility
III. Individual Coverage HRA Employer Notice
IV. Individual Coverage HRA/QSEHRA Individual Market Special Enrollment Period (SEP)
V. Additional Information
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    II. Individual Coverage HRA Consumer Scenarios

Disclosure

- The information provided in this presentation is intended only as a general, informal summary of technical legal standards. It is not intended to take the place of the statutes, regulations, and formal policy guidance that it is based upon. Please refer to the applicable statutes, regulations, and other interpretive materials for complete and current information about applicable requirements.

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Individual Coverage Health Reimbursement Arrangements (HRAs) and Other Types of HRAs

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What is an HRA?

- An **HRA** is a group health plan funded solely by employer contributions that reimburses an employee's medical care expenses up to a maximum dollar amount for a coverage period.*
- HRA reimbursements are excludable from the employee's income and wages for federal income tax and employment tax purposes.
- An employer may allow funds that remain in the HRA at the end of the year to carry over into future years.
- In addition to the employee, an HRA may also reimburse expenses incurred by the employee's spouse, dependents, and children who, as of the end of the taxable year, have not attained age 27 (dependents).

**Medical care expenses means expenses for medical care as defined under section 213(d) of the Internal Revenue Code.*

Resource: Health Reimbursement Arrangements - CMS.gov Resource Page

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Individual Coverage HRA

- The June 2019 HRA Rule allows employers to meet the Patient Protection and Affordable Care Act (PPACA) requirements by offering an **Individual Coverage HRA** that requires employees and any covered dependents to be enrolled in **individual health insurance coverage**; or **Medicare Parts A and B, or Part C**; in order to receive reimbursements for medical care expenses from the Individual Coverage HRA. Reimbursements by the Individual Coverage HRA may include premiums and cost sharing for individual health insurance coverage, and for Medicare.
- Employers may begin offering Individual Coverage HRAs as of January 1, 2020.

Resource: Health Reimbursement Arrangements and Other Account-Based Group Health Plans – Final Rule

Individual Coverage HRA Classes

- If you offer an Individual Coverage HRA, you must offer it **on the same terms** to all individuals within a class of employees, except that the amounts offered may be increased for older workers and for workers with more dependents.
- Employers may make distinctions, using classes based on the following status (classes may be combined):
  - Full-time employees
  - Part-time employees
  - Seasonal employees
  - Employees covered by a Collective Bargaining Agreement
  - Employees who have not satisfied a waiting period
  - Nonresident aliens with no US based income
  - Employees working in the same rating area
  - Salaried employees
  - Non-salaried employees (e.g. hourly)
  - Temporary employees of a staffing firm
- In general, no traditional group health plan can be offered to any class of employees offered an Individual Coverage HRA.

Individual Coverage HRA Classes—Cont.

- Minimum class size rule applies **only if** an employer offers a traditional group health plan to one class of employees **and** an Individual Coverage HRA to another class based on:
  - Full-time vs. part-time status
  - Salaried vs. non-salaried status
  - Geographic location (if smaller than a state)
  - Combination of any class above with any other class (except waiting period class)
- Minimum class size is:
  - Ten employees, for an employer with fewer than 100 employees
  - Ten percent of employees, for an employer with 100 to 200 employees.
  - Twenty employees, for employers with more than 200 employees

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Individual Coverage HRA Classes—Cont.

- These minimum class requirements **do not apply** if an employer offers only an Individual Coverage HRA to employees.
- The final rules include a special rule that, among other things, allows employers to maintain a traditional group health plan for current employees while beginning to offer an Individual Coverage HRA to newly hired employees in the same classification of employees.

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Qualified Small Employer Health Reimbursement Arrangement (QSEHRA)

- The 21st Century Cures Act permits small employers who don't offer group health plan coverage to any of their employees to provide a **QSEHRA** to their eligible employees to help employees pay for medical care expenses.
- An eligible employee can use a QSEHRA to reimburse medical care expenses for him or herself, as well as any covered dependents (if permitted by the employer).
- To receive reimbursements from a QSEHRA, an employee and any covered dependents must be enrolled in **minimum essential coverage** (MEC).
- Small employers can provide QSEHRAs for plan years beginning on or after January 1, 2017.

Resources: HealthCare.gov – What's a QSEHRA?; IRS Notice 2017-67 – Qualified Small Employer Health Arrangements

Excepted Benefit HRAs (EBHRAs)

- The June 2019 Final HRA Rule also created another, limited kind of HRA for employers that offer a traditional group health plan. These Excepted Benefit HRAs permit employers to reimburse additional medical care expenses (for example to help cover the cost of copays, deductibles, or other expenses not covered by the primary plan) even if the employee declines enrollment in the traditional group health plan.
- EBHRAs are limited in amount:
  - The amounts newly made available for a plan year may not exceed $1,800 per year, indexed for inflation.

Resource: For more information on EBHRAs, see Question 11 of "FAQs on New Health Coverage Options for Employers and Employees."

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Excepted Benefit HRAs (EBHRAs)—Cont.

- Excepted Benefit HRAs **must not be** an integral part of the plan.
  - The employer must provide some other group health plan option in addition to an EBHRA to the same employees.
- EBHRAs **cannot** be used to reimburse premiums for group or individual coverage or Medicare.
  - They **can reimburse** premiums for:
    - COBRA or other continuation coverage,
    - Short-term, limited-duration coverage (unless prohibited for small employers in a state under a special rule), or
    - Excepted benefits, such as dental and vision.

ERISA Plan Status Safe Harbor

- DOL clarified that individual health insurance coverage integrated with an HRA is **not part of a group health plan if**:
  - Purchase of individual health insurance coverage is completely voluntary
  - Plan sponsor does not select or endorse coverage
  - Reimbursement for nongroup health insurance premiums is limited solely to individual health insurance coverage
  - Plan sponsor receives no consideration in connection with the employee’s selection or renewal of any individual health insurance coverage
  - Each plan participant is notified annually that the individual health insurance coverage is not subject to Title I of ERISA

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Cafeteria Plans and Individual Coverage HRAs

- A cafeteria plan is a separate written plan maintained by an employer for employees that meets the specific requirements of section 125 of the Internal Revenue Code. It provides participants an opportunity to receive certain benefits on a pretax basis. Participants in a cafeteria plan must be permitted to choose among at least one taxable benefit (such as cash) and one qualified benefit.
- Employers **may not allow** salary reduction through a cafeteria plan to pay the portion of the **Marketplace premiums** not covered by an Individual Coverage HRA; however, employers **may allow** salary reduction through a cafeteria plan to pay the portion of premiums not covered by an Individual Coverage HRA for coverage purchased **outside the Marketplace**.

Individual Coverage HRAs: Impact on PTC

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Individual Coverage HRAs: Impact on PTC Eligibility

- A premium tax credit (PTC) is **not allowed** for an individual's Marketplace coverage if he/she is offered an Individual Coverage HRA that is **affordable**. This applies to employees as well as spouses and dependents of employees to whom the offer extends.
- If the Individual Coverage HRA is **not affordable** based on standards set forth in the final rule, a **PTC is allowed** if the employee offered the coverage "**opts out**" of the HRA and the other PTC requirements are met.
- A PTC is not allowed for an individual's Marketplace coverage if the individual chooses to be covered by an Individual Coverage HRA, regardless of whether the HRA is affordable.

Determining Affordability

- As an eligible employer-sponsored plan, an Individual Coverage HRA is considered **affordable** for an employee if the employee's required contribution for **self-only coverage for the lowest-cost silver plan** in his or her rating area, net of the HRA contribution, does not exceed a specified percentage of the employee's household income.
  - The percentage is **adjusted annually** by the IRS and is posted on HealthCare.gov and the IRS website.
  - Additionally, under an employee safe harbor, an eligible employer-sponsored plan is not considered affordable for **the entire plan year** of the eligible employer-sponsored plan if, at the time an individual enrolls in a Qualified Health Plan offered through an Exchange, the Exchange determines that the eligible employer-sponsored plan is not affordable.

Determining Affordability

- CMS has resources available to help individuals offered an Individual Coverage HRA and using the Federal HealthCare.gov platform determine their eligibility for advance payments of the PTC (APTC) based on whether the Individual Coverage HRA is considered affordable.
  - For more information, visit: https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/Health-Reimbursement-Arrangements
- HealthCare.gov has information for consumers with an Individual Coverage HRA offer on the PTC implications.
  - For more information, visit: https://www.healthcare.gov/ichra/

Proposed IRS Safe Harbor Regulations

- The Department of Treasury set forth proposed regulations to clarify the application of the **employer shared responsibility provisions** and certain nondiscrimination rules under the Internal Revenue Code to HRAs and other account-based group health plans integrated with individual health insurance coverage or Medicare, and to provide certain safe harbors with respect to the application of those provisions to individual coverage HRAs.
- Taxpayers may rely on the proposed regulations under section 4980H for periods during any plan year of individual coverage HRAs beginning before the date that is six months following the publication of any final regulations, and taxpayers may rely on the proposed regulations under section 105(h) for plan years of individual coverage HRAs beginning before the date that is six months following the publication of any final regulations.

Resource: For more information, see the proposed regulations.

Individual Coverage HRA Employer Notice

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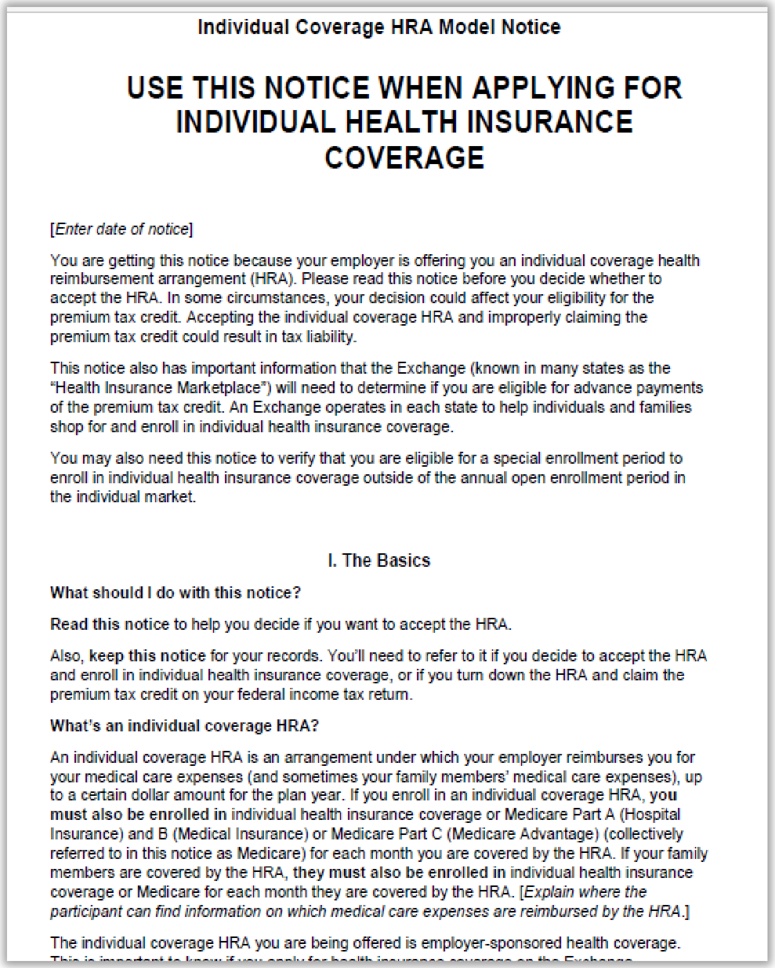
Individual Coverage HRA Employer Notice

- An employee who is offered an Individual Coverage HRA must generally get a written notice at least **90 days** before the beginning of the Individual Coverage HRA's plan year.
- Employees who become eligible during the plan year, or later than 90 days before the start of the plan year (such as newly hired employees), will get their notice **no later than** the date on which their coverage under the Individual Coverage HRA can begin.

Employer Notice Requirements

The final rule requires this "employer notice" to include key information about the Individual Coverage HRA, such as the dollar amount of the HRA offer, the date that coverage under the HRA may begin, and whether the offer extends to dependents (among other things).

Resource: For more information on the Individual Coverage HRA employer notice, see the Individual Coverage HRA Model Notice.



Individual Coverage HRA Model Notice

USE THIS NOTICE WHEN APPLYING FOR INDIVIDUAL HEALTH INSURANCE COVERAGE

[*Enter date of notice*]

You are getting this notice because your employer is offering you an individual coverage health reimbursement arrangement (HRA). Please read this notice before you decide whether to accept the HRA. In some circumstances, your decision could affect your eligibility for the premium tax credit. Accepting the individual coverage HRA and improperly claiming the premium tax credit could result in tax liability.

This notice also has important information that the Exchange (known in many states as the "Health Insurance Marketplace") will need to determine if you are eligible for advance payments of the premium tax credit. An Exchange operates in each state to help individuals and families shop for and enroll in individual health insurance coverage.

You may also need this notice to verify that you are eligible for a special enrollment period to enroll in individual health insurance coverage outside of the annual open enrollment period in the individual market.

I. The Basics

What should I do with this notice?

Read this notice to help you decide if you want to accept the HRA.

Also, **keep this notice** for your records. You'll need to refer to it if you decide to accept the HRA and enroll in individual health insurance coverage, or if you turn down the HRA and claim the premium tax credit on your federal income tax return.

What's an individual coverage HRA?

An individual coverage HRA is an arrangement under which your employer reimburses you for your medical care expenses (and sometimes your family members' medical care expenses), up to a certain dollar amount for the plan year. If you enroll in an individual coverage HRA, **you must also be enrolled in** individual health insurance coverage or Medicare Part A (Hospital Insurance) and B (Medical Insurance) or Medicare Part C (Medicare Advantage) (collectively referred to in this notice as Medicare) for each month you are covered by the HRA. If your family members are covered by the HRA, **they must also be enrolled in** individual health insurance coverage or Medicare for each month they are covered by the HRA. [*Explain where the participant can find information on which medical care expenses are reimbursed by the HRA.*]

The individual coverage HRA you are being offered is employer-sponsored health coverage.

Employer Notice Requirements—Cont.

- The employer notice must also include (among other things):
  - Contact information (including a phone number) for an individual or a group of individuals who participants may contact in order to receive additional information regarding the Individual Coverage HRA.
  - A statement of availability of an SEP to enroll in or change individual health insurance coverage, through or outside of an Exchange, for the participant and any dependents who newly gain access to the Individual Coverage HRA and are not already covered by the Individual Coverage HRA.
  - A statement that the Individual Coverage HRA is not a QSEHRA.

Employer Notice: QSEHRAs

- Employers that provide QSEHRAs also must provide a notice: Section 9831(d)(4) of the Internal Revenue Code requires an eligible employer who provides a QSEHRA to its eligible employees to furnish a written notice to each eligible employee at least 90 days before the beginning of each plan year, or for an employee who is not eligible to participate at the beginning of the plan year, the date on which the employee is first eligible to participate in the QSEHRA.

Resource: For more information, see Section E. "Written Notice Requirement" in IRS Notice 2017-67.

Individual Coverage HRA/QSEHRA Individual Market Special Enrollment Period (SEP)

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Overview: Individual Coverage HRA/QSEHRA Special Enrollment Period (SEP)

- Employees and their dependents who newly gain access to an Individual Coverage HRA or who are newly provided a QSEHRA may qualify for a special enrollment period (SEP) to enroll in individual coverage through or outside of the Marketplace.
- The **triggering event** is the first day on which coverage for the qualified individual, enrollee, or dependent under the Individual Coverage HRA can take effect, or the first day on which coverage under the QSEHRA takes effect.

Enrolling through a SEP

- Generally, qualified individuals will need to apply for and **enroll** in individual health insurance coverage in time for it to take effect **by the date** their Individual Coverage HRA/QSEHRA starts.
- Employees with questions about their Individual Coverage HRA or QSEHRA start date should check their employer notice or contact their employer.
- Individuals whose Individual Coverage HRA or QSEHRA starts on January 1st should enroll during the individual market annual **Open Enrollment Period**, so that their individual health insurance coverage start date coincides with the January 1st start date of their Individual Coverage HRA or QSEHRA.

SEP Coverage Effective Dates

- If the individual selects an individual health insurance plan before the triggering event, his or her coverage will take effect on the first day of the month following the date of the triggering event or, if the triggering event is on the first day of a month, on the date of the triggering event.
- If the plan selection is made on or after the day of the triggering event, coverage will take effect on the first day of the month following plan selection.

Getting Started

- Employers who would like assistance setting up an individual coverage HRA for their business can contact a variety of industry professionals:
  - Insurance brokers
  - Employee benefit consultants
  - Employee benefit compliance companies
  - Employee benefit technology solutions
  - Payroll providers
  - HRA administrators
- There are many other industry solutions that can fit your business needs; use a search engine (e.g., keyword search "ICHRA") or social media to look into industry companies that could help you set up an individual coverage HRA and advise you on the best health care coverage options for your business.

Appendix A: Certain HRAs vs. SHOP Group Coverage

Appendix A: Certain HRAs vs SHOP

	Individual Coverage HRAs	QSEHRAs	SHOP
Employers can offer this option to help employees pay for their medical care expenses/premiums	Yes, employers of all sizes may offer an Individual Coverage HRA*	Yes, employers with fewer than 50 full-time employees may provide a QSEHRA*	Yes, employers with 1-50 full-time employees are generally eligible for SHOP small group insurance
Affordability Determined Using…	Employee’s self-only lowest-cost silver plan premium (LCSP) and household income	Employee’s self-only second-lowest cost silver plan premium (SLCSP) and household income	Based on the employee’s self-only contribution and their household income**
If coverage is deemed unaffordable…	Employee must “opt out” to be PTC-eligible, if they otherwise qualify for PTC	Employee must reduce monthly PTC, if they otherwise qualify for PTC, by their monthly QSEHRA amount	Employee may qualify for PTC on the individual Marketplace

*Employers offering an Individual Coverage HRA generally cannot offer traditional group health plan coverage to employees in the same class; employers providing a QSEHRA cannot offer group health plan coverage to any employees.

**There is no penalty for businesses that are not applicable large employers (ALE) if they provide unaffordable coverage and their employee claim PTC on the Individual Marketplace.

Appendix B: Individual Coverage HRA Consumer Scenarios

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Scenario 1: Employee without dependents has an affordable Individual Coverage HRA offer

- For 2020 Jane (single, no dependents) has estimated household income of $51,000.
- Jane's employer offers its employees an Individual Coverage HRA starting on January 1, 2020 that reimburses $2,400 of medical care expenses for single employees with no children.
- The self-only monthly premium for the lowest cost silver plan (LCSP) that is offered in the Exchange for the rating area in which Jane resides is $500.
- Jane's required contribution is $300, which is lower than the product of the required contribution percentage and her household income divided by 12. Therefore, the Individual Coverage HRA is affordable, and Jane is not eligible for APTC.
  - $500 - $200 = $300 (Jane's required contribution: self-only LCSP monthly premium – monthly Individual Coverage HRA amount)
  - ($51,000 x .0978)/12= $415.65 (1/12 of the product of Jane's household income for the tax year and the required contribution percentage)
- Jane accepts her employer's Individual Coverage HRA offer, and during Open Enrollment, she enrolls in individual health insurance coverage in order to meet the requirement to be enrolled in such coverage.

Scenario 2: Employee without dependents has an unaffordable Individual Coverage HRA offer

- For 2020 Jane (single, no dependents) has estimated household income of $28,000.
- Jane's employer offers its employees an Individual Coverage HRA starting on January 1, 2020 that reimburses $2,400 of medical care expenses for single employees with no children.
- The self-only monthly premium for the lowest cost silver plan (LCSP) that is offered in the Exchange for the rating area in which Jane resides is $500.
- Jane's required contribution is $300, which is higher than the product of the required contribution percentage and her household income, divided by 12. Therefore, Jane's HRA offer is unaffordable and she may be eligible for APTC.
  - $500 - $200 = $300 (Jane's required contribution: LCSP monthly premium – monthly Individual Coverage HRA amount)
  - ($28,000 x .0978)/12 = $228.20 (1/12 of the product of Jane's household income for the tax year and the required contribution percentage)
- Jane opts out of her employer's Individual Coverage HRA offer, and during Open Enrollment, she can enroll in a qualified health plan through the Exchange with APTC, if otherwise eligible. Next year, she should update her employer coverage information in her Marketplace application, especially if her employer makes changes to her coverage, such as increasing the amount offered through her Individual Coverage HRA.

Scenario 3: Employee with dependents has an affordable Individual Coverage HRA offer

- For 2020, Jane is married and has one child. Jane has estimated household income of $28,000.
- Jane's employer offers its employees an Individual Coverage HRA starting on January 1, 2020 that reimburses $3,600 of medical care expenses for single employees with no children (the "self-only HRA amount") and $5,000 for employees with a spouse or children.
- The self-only monthly premium for the lowest cost silver plan (LCSP) that is offered in the Exchange for the rating area in which Jane resides is $500. Jane's required contribution is $200, which is lower than 1/12 of the product of the required contribution percentage and her household income. Therefore, Jane's Individual Coverage HRA is affordable and she, her spouse, and child are not eligible for APTC.
  - $500 - $300 = $200 (Jane's required contribution: LCSP monthly premium – monthly self-only Individual Coverage HRA amount)
  - ($28,000 x .0978)/12 = $228.20 (1/12 of the product of Jane's household income for the tax year and the required contribution percentage)
- Jane accepts her employer's Individual Coverage HRA offer and, during Open Enrollment, Jane, her spouse and child enroll in individual health insurance coverage in order to meet her Individual Coverage HRA's requirement to be enrolled in such coverage.

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Scenario 4: Employee with dependents has an unaffordable Individual Coverage HRA offer

- Jane, her spouse, and child are offered an Individual Coverage HRA for all months of 2020 by Jane's employer.
- When enrolling in Exchange coverage for herself and her family, Jane received a determination by the Exchange that the Individual Coverage HRA was unaffordable because she believed her household income would be lower than it turned out to be.
- Jane opts out of the Individual Coverage HRA offer, enrolls her family in Exchange coverage, and receives APTC for her family's 2020 coverage.
- The Individual Coverage HRA is considered unaffordable for Jane and her family for purposes of claiming PTC on her tax return, provided that she did not, with intentional or reckless disregard for the facts, provide incorrect information to the Exchange.

Scenario 5: Employee is hired after the first day of the plan year

- An employer offers all employees an Individual Coverage HRA that starts on January 1, 2020. The Individual Coverage HRA amount is $7,000 for the employees enrolled for all 12 months of the plan year.
- The employer hires Tom on January 15, 2020, and he is eligible to enroll in the Individual Coverage HRA with an effective date of the first day of the following month, February 1, 2020, as long as he enrolls in individual health insurance coverage that takes effect on or before February 1, 2020. He is offered a pro-rated amount of $6,416 based on the portion of the plan year during which he will be covered by the HRA. Like other employees, Tom's affordability will be based on the monthly amount of $583.27 ($6,416/11 months of HRA eligibility).
- He must select a plan by January 31, 2020 in order to ensure an individual health insurance coverage effective date of February 1, 2020. Alternatively, Tom has 60 days after his Individual Coverage HRA could start to enroll in individual market coverage that will take effect the first of the following month. However, he should first confirm that his employer will permit his Individual Coverage HRA to start later than February 1.

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