

Overview of New Health Reimbursement Arrangements

Part Two



2020

Agenda

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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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Health Reimbursement Arrangements (HRA) 101 Overview

Individual Coverage HRA Overview

- 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 for medical care expenses are excludable from the employee's income and wages for federal income tax and employment tax purposes.
- In order to receive reimbursements for medical care expenses from the individual coverage HRA, employees and any covered dependents must be enrolled in individual health insurance coverage; or Medicare Parts A and B, or Part C.
 - Reimbursements by the individual coverage HRA may include premiums and cost sharing for individual health insurance coverage, and for Medicare.

Individual Coverage HRA Overview—Cont.

- An individual coverage HRA must be offered 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.
 - In general, no traditional group health plan can be offered to any class of employees offered an Individual Coverage HRA.
- 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.
- Employees and their dependents who newly gain access to an individual coverage HRA may qualify for a special enrollment period (SEP) to enroll in individual health insurance coverage through or outside of the Marketplace.

QSEHRA Overview

- Small employers who don't offer group health plan coverage to any of their employees can provide a qualified small employer HRA (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).

Excepted Benefit HRA Overview

- Excepted benefit HRAs (EBHRAs) 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 and may not exceed \$1,800 per year, indexed for inflation.
- EBHRAs cannot be used to reimburse premiums for group or individual coverage or Medicare but can be used to reimburse premiums for continuation coverage, excepted benefits, and short-term, limited duration insurance.
- The employer must offer some other group health plan option in addition to an EBHRA to the same employees.

Additional Resources

- For more information on individual coverage HRAs, visit the following pages:
 - [CMS's health reimbursement arrangements resource](#)
 - [Information on individual coverage HRAs for businesses from HealthCare.gov](#)
 - [Information on individual coverage HRAs for employees from HealthCare.gov](#)

Individual Coverage HRA Integration with Non-Individual Health Coverage

Spousal Coverage

- An individual coverage HRA cannot be integrated with other group health plan coverage, such as spousal coverage.
- If spouses are each offered an individual coverage HRA from their respective employers, they may use their separate individual coverage HRAs to buy a single individual health insurance policy that covers both spouses (and any dependents).
 - However, each individual may only seek reimbursement for the portion of a medical care expense that has not already been reimbursed by some other means, including from one of the individual coverage HRAs.

Resource: Health Reimbursement Arrangements and Other Account-Based Group Health Plans – Final Rule, Page 28925

Individual Coverage HRAs and Medicare

- Employees enrolled in an individual coverage HRA 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) for each month they are covered by the HRA.
- An individual coverage HRA that is integrated with Medicare may reimburse premiums for Medicare Part A, B, C, or D, as well as premiums for Medigap policies, provided the terms of the individual Coverage HRA permit reimbursement for such expenses.

Resource: [Health Reimbursement Arrangements and Other Account-Based Group Health Plans – Final Rule, Page 28928](#)

Individual Coverage HRAs and Medicare—Cont.

- Employers subject to Medicare Secondary Payer rules must provide employees equal benefits regardless of Medicare eligibility or entitlement and avoid discrimination in group health plan benefits against Medicare employees.
- Substantiation, notice, class rules, and other requirements apply to integration with Medicare in the same manner as they apply to integration with individual health insurance coverage.

Resource: [Health Reimbursement Arrangements and Other Account-Based Group Health Plans – Final Rule, Page 28928](#)

Individual Coverage HRAs and COBRA

- An individual coverage HRA cannot be integrated with other group health plan coverage, such as COBRA coverage.
- Generally, HRAs are group health plans subject to COBRA continuation coverage requirements.
- Under COBRA, certain individuals who lose employer-sponsored coverage may elect to continue the coverage by paying a premium when the loss of coverage is due to a “qualifying event.”
- Failure by an individual to satisfy the integration requirement of maintaining individual health insurance coverage is not a qualifying event for purposes of COBRA. Thus, the loss of eligibility to participate in an individual coverage HRA due to the failure of the individual to maintain individual health insurance coverage does not create a right to COBRA.

Resource: [Health Reimbursement Arrangements and Other Account-Based Group Health Plans – Final Rule](#), Page 28901

Individual Coverage HRAs and COBRA—Cont.

- A loss of coverage due to a termination of employment or a reduction in the number of hours of employment generally is a loss of coverage due to a qualifying event.
 - For example, an employee covered by an individual coverage HRA who, due to a reduction in hours, is moved to a class of employees who are not offered any group health coverage would have a right to COBRA in the HRA, as would an individual who loses coverage under the HRA due to termination of employment.
 - In this situation, the employee also qualifies for a special enrollment period to change individual health insurance coverage.

Resource: Health Reimbursement Arrangements and Other Account-Based Group Health Plans – Final Rule, Page 28901

Implementing an Individual Coverage HRA

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.

Self-Employed Business Owners

- HRAs are a means for employers to provide tax-favored benefits to employees, and thus the tax code does not allow self-employed business owners or individuals (e.g., independent contractors) to be provided a tax-favored individual coverage HRA.
- For questions regarding your specific business ownership structure and eligibility for tax-preferred benefits, please contact a licensed tax professional.

Resource: [Health Reimbursement Arrangements and Other Account-Based Group Health Plans – Final Rule, Page 28910](#)

Employer Verification Requirements

- In order for an HRA to be integrated with individual health insurance coverage or Medicare, among other requirements, in general, the HRA must implement, and comply with, reasonable procedures to substantiate that participants and dependents covered by the HRA are, or will be, enrolled in individual health insurance coverage or Medicare Parts A and B, or Part C for the plan year (or for the portion of the plan year the individual is covered by the HRA, if applicable).
- This requirement may be satisfied by providing a document from a third party, like an issuer, verifying coverage.

Resource: Health Reimbursement Arrangements and Other Account-Based Group Health Plans – Final Rule, 28980-28981

Employer Verification Requirements—Cont.

- As an alternative procedure, this requirement may also be satisfied if the HRA requires participants to provide an attestation of coverage, including the date coverage begins and the provider of the coverage.
- The Departments have developed model attestations for HRAs that choose to use attestation to satisfy either the annual coverage substantiation requirement or the ongoing substantiation requirement.

Resources: Health Reimbursement Arrangements and Other Account-Based Group Health Plans – Final Rule, 28980-28981.
Individual Coverage HRA Model Attestations.

Individual Coverage HRAs and Section 125 Plans

- For an employee covered by an individual coverage HRA who purchases individual health insurance coverage ***outside of an Exchange***, the employer may permit the employee to pay the balance of the premium for the coverage through its cafeteria plan under Code Section 125, subject to all applicable cafeteria plan guidance.
- An HRA is not provided on the same terms unless the salary reduction arrangement, if made available to any participant in a class of employees, is made available on the same terms to all participants (other than former employees).

Resource: Health Reimbursement Arrangements and Other Account-Based Group Health Plans – Final Rule, Page 28904

Reimbursing Employee Expenses

- Any method currently allowed for facilitating reimbursements of HRA amounts, electronic or otherwise, may be used for individual coverage HRA reimbursements.
- “Reimbursement” may include employee-initiated payments made through use of financial instruments, such as suitably restricted debit cards, as well as direct payments, individual or aggregate, by an individual coverage HRA sponsor to the health insurance issuer.

Resource: Health Reimbursement Arrangements and Other Account-Based Group Health Plans – Final Rule, Page 28951.

Reimbursing Employee Expenses—Cont.

- The Department of Labor (DOL) clarified that individual health insurance coverage integrated with an HRA is not part of a group health plan if certain conditions are satisfied.
- DOL cautions that plan sponsors should take care to ensure that payment practices do not violate the prohibition on endorsements because they effectively limit participants' and beneficiaries' ability to select certain coverage options or favor certain issuers or coverage options.

Resource: Health Reimbursement Arrangements and Other Account-Based Group Health Plans – Final Rule, Page 28951.

Reimbursing Employee Expenses—Cont.

- Examples in which the procedure would be considered an endorsement, and the criteria of the safe harbor would not be satisfied include:
 - If an employer were to establish procedures for sending direct payments for premiums to health insurance issuers, but those procedures excluded any health insurance issuers, or
 - If an employer were to place additional burdens on HRA participants if they chose health insurance coverage offered only by specific health insurance issuers.

Resource: Health Reimbursement Arrangements and Other Account-Based Group Health Plans – Final Rule, Page 28951.

Expenses Eligible for Reimbursement

- An individual coverage HRA generally may reimburse expenses for medical care, as defined under Code Section 213(d), of an employee and certain members of the employee's family.
 - A plan sponsor may allow an HRA to reimburse all medical care expenses, may limit an HRA to allow reimbursements only for premiums, or may limit an HRA to allow reimbursements only for certain non-premium medical care expenses.
 - While an HRA is not required to be used for premium reimbursement, we anticipate most employers will allow employees to use the HRA to reimburse premiums due to the requirement to maintain individual coverage.

Resource: [Health Reimbursement Arrangements and Other Account-Based Group Health Plans – Final Rule, Page 28926.](#)

Expenses Eligible for Reimbursement—Cont.

- Under Code section 213(d), medical care expenses generally include amounts paid:
 - For the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure of function of the body;
 - For transportation primarily for and essential to medical care;
 - For certain qualified long-term care services; and
 - For insurance covering medical care.

Resource: Health Reimbursement Arrangements and Other Account-Based Group Health Plans – Final Rule, Page 28926; IRS Publication 502 (2019), Medical and Dental Expenses.

Individual Coverage HRAs and the Employer Mandate

- The Department of Treasury set forth proposed regulations to clarify the application of the employer shared responsibility provisions to HRAs and other account-based group health plans integrated with individual health insurance coverage or Medicare.
- An offer of an individual coverage HRA constitutes an offer of an eligible employer-sponsored plan. Consequently, if an applicable large employer (ALE) offers an individual coverage HRA to at least 95% of its full-time employees (and their dependents), the ALE will not be liable for an employer shared responsibility payment under section 4980H(a) for the month, regardless of whether any full-time employee is allowed the PTC. (However, the ALE may still be liable under section 4980H(b) with respect to employees who are allowed a PTC.)

Resource: [Proposed IRS Regulations](#), Page 51473.

Determining Affordability

- An eligible employer-sponsored plan is 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.
- Proposed IRS regulations provide that for purposes of section 4980H(b), an employer may use the lowest cost silver plan for the employee for self-only coverage offered through the Exchange where the employee's primary site of employment is located for determining whether an offer of an individual coverage HRA to a full-time employee is affordable.

Resource: [Health Reimbursement Arrangements and Other Account-Based Group Health Plans – Final Rule, Page 28893 and the proposed regulations.](#)

Lowest Cost Silver Plan Premium Look-up Table

- To help employers determine whether an individual coverage HRA offer is considered affordable, CMS has published a Lowest Cost Silver Plan Premium Look-up Table.
- The table allows users in states that use HealthCare.gov to access individual market Qualified Health Plans (QHP) lowest cost silver plan data by geographic location.

Resource: [The Individual Coverage HRA Employer Lowest Cost Silver Plan Premium Look-up Table.](#)

Ending an Individual Coverage HRA

- An employee who loses coverage under an individual coverage HRA may qualify for a special enrollment period (SEP) for loss of minimum essential coverage to change his or her individual health insurance coverage either on or off an Exchange.

Resource: Health Reimbursement Arrangements and Other Account-Based Group Health Plans – Final Rule, Page 28913.

Opt-Out Provision

- Participants generally must be provided an opportunity to opt out of the individual coverage HRA once (and only once) for each plan year and upon termination of employment.
- For participants or dependents who become eligible for the individual coverage HRA on a date other than the first day of the plan year, the ability to opt out must be provided during the HRA enrollment period established by the HRA for these individuals and then subsequently on an annual basis in advance of the plan year.

Resource: Health Reimbursement Arrangements and Other Account-Based Group Health Plans – Final Rule, Page 28915-28916.

Interaction between Individual Coverage HRAs and HSAs

- An individual coverage HRA that solely makes available reimbursements of individual health insurance coverage premiums does not disqualify an otherwise eligible individual covered under a high deductible health plan (HDHP) and no other disqualifying coverage from making contributions to an HSA.
 - However, an individual coverage HRA that is not limited in accordance with the relevant guidance under the Code would not be HSA-compatible (for example, an HRA that can reimburse first dollar cost sharing).

Resource: [Health Reimbursement Arrangements and Other Account-Based Group Health Plans – Final Rule, Page 28926-28927.](#)

Interaction between Individual Coverage HRAs and HSAs —Cont.

- An employer who offers employees in a class of employees a choice between an HSA-compatible individual coverage HRA and an individual coverage HRA that is not HSA-compatible does not fail to satisfy the same terms requirement provided both types of individual coverage HRAs are offered to all employees in the class on the same terms.
- Additionally, allowing unused amounts in an individual coverage HRA to be transferred to an HSA would be inconsistent with the relevant provisions of the Internal Revenue Code and is not permitted.

Resource: [Health Reimbursement Arrangements and Other Account-Based Group Health Plans – Final Rule, Page 28926-28927.](#)