

HEALTH REIMBURSEMENT ARRANGEMENTS: WHAT EMPLOYERS NEED TO KNOW AND AVOID

Publication
Sep 2, 2019

Health Reimbursement Arrangements (HRAs) are account-based health plans funded with employer contributions to reimburse eligible participants and dependents for medical expenses. Prior to the Affordable Care Act, HRAs were not uncommon.

After the ACA, however, HRAs – which were classified as group health plans (GHPs) – had to satisfy the ACA's market reform requirements, such as the prohibition against annual limits. Thus, unless an HRA was integrated with a GHP, HRAs usually could not satisfy these requirements alone.

RECENT DEVELOPMENTS

On June 13, the Departments of Treasury, Labor, and Health and Human Services issued final regulations regarding HRAs, which will be effective on January 1, 2020. The regulations discuss two types of HRAs: (1) the individual coverage HRA (ICHRA); and (2) the expected benefit HRA.

An ICHRA can satisfy GHP requirements by integrating the HRA with individual market coverage or Medicare. The expected benefit HRA permits an employee to obtain excepted benefits like dental, vision, or short-term limited-duration insurance with an HRA. This article will focus on ICHRAs.

GENERAL ICHRA REQUIREMENTS

In order to offer an ICHRA, employers must ensure that a number of requirements are satisfied. For example, all individuals covered by the HRA need to be enrolled in

individual health insurance or Medicare. Additionally, before any reimbursements are made, the employer must substantiate such enrollment with documentation from a third party or the participant's attestation. An attestation, however, must be disregarded, if the employer has actual knowledge that the individual is not enrolled in eligible coverage.

Additionally, HRA coverage must be offered uniformly on the same terms and conditions to all employees in the class. Classes will be discussed in more detail below, but the regulations permit an employer to increase the maximum benefit for (1) older participants if that increase applies to all similarly aged participants in that class, and (2) participants with more dependents.

Further, being covered by an ICHRA will make an individual ineligible for a Premium Tax Credit (PTC). For this reason, the regulations have numerous notice requirements. First, employers must provide notice to eligible ICHRA employees 90 days before the beginning of a plan year that their participation in the ICHRA will make them ineligible for a PTC. For newly eligible employees, the notice must be provided no later than the date they are first eligible to participate. Moreover, there must be an opt-out provision at least annually and upon termination.

DEFINING A CLASS

The ICHRA regulations make it possible for employers to offer an HRA to a certain class of employees and a traditional GHP to another class. It is important to note that an employer may not offer the same class of employees the option of an ICHRA or a traditional GHP.

The regulations also provide strict rules regarding how to define classes. The classes must be of a minimum size based on the number of employees the employer has:

- If the employer has fewer than 100 employees, the minimum class size is 10;
- If the employer has over 100 employees but fewer than 200, the minimum class size is 10% of the total number of employees; and
- If the employer has over 200 employees, the minimum class size is 20 employees.

Additionally, the classes must be based on named classes in the regulations which are based on objective criteria:

- full-time;
- part-time;

- salaried;
- non-salaried;
- employees whose primary site of employment is in the same rating area;
- seasonal employees;
- employees covered by the same collective bargaining agreement sponsored by the employer;
- employees who have not satisfied a waiting period;
- non-resident aliens with no US-based income;
- employees hired by a staffing firm; and
- any group of participants that fit into two or more of the above classes.

The regulations also clarify that employers may still offer retiree-only HRAs and they will not be subject to the ICHRA rules.

CONCLUSION

Given that there is a notice requirement and that open enrollment for plans that begin January 1, 2020 will generally begin in the fall, employers that would like to implement an ICHRA would likely have to start making plan design decisions soon. Even though the concept of an HRA may be familiar to many employers, these new regulations are nuanced, and employers will likely need assistance to navigate them.

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