New HRA Rules: What Employers Need to Know

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Starting in 2020, employers will be able to offer health reimbursement arrangements (HRAs) that work in conjunction with individual coverage or Medicare without running afoul of the Affordable Care Act's (ACA) market reform rules.

These individual coverage HRAs (ICHRAs) could be used to pay for out-of-pocket expenses, premiums for Medicare, or individual policies purchased through or outside an ACA marketplace. Separately, employers would also be able to offer "excepted benefit" HRAs, which could not reimburse premiums for individual coverage, Medicare, or group coverage (other than COBRA), but could cover some medical care expenses and certain premiums, such as for dental and vision coverage.

These are the highlights of final rules published on June 20, 2019, in the Federal Register by the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services. The rules provide a formula for determining "affordability" for certain purposes, but leave unanswered a key question for employers: could ICHRAs be used to cost-effectively meet the ACA requirement to offer affordable coverage to nearly all full-time employees?

These rules, along with regulations related to association health plans and short-term limited duration coverage, reflect the central healthcare policymaking of the Trump administration to date.

Individual Coverage HRAs

Under current guidance, HRAs can only satisfy the ACA's rules on annual limits if they are integrated with group health plans. In the new ICHRAs, employers will set a maximum dollar amount made available each year, and allow unused funds to roll over from year to year. Employees may also be able to use pretax contributions through a cafeteria plan to pay for individual coverage beyond the employer contribution, but only if that coverage is purchased outside an ACA marketplace. As with traditional HRAs, employer contributions to ICHRAs are pretax—they are not included in employees' taxable wages.

An employee will have to be covered by individual health insurance or Medicare for each month for which he or she is covered by an ICHRA. Short-term, limited-duration insurance and coverage limited to excepted benefits (dental, vision, etc.) are not eligible for reimbursements from ICHRAs.
Employers will not be able to offer any individual employee a choice between an ICHRA and any other type of group health plan. Instead, employers will have to offer the same benefits packages to all employees in a certain class. And the benefit packages will have to be offered on the same terms to all employees within a class, except that contributions may be higher based on age or number of dependents.

For purposes of the ICHRA rules, the following classes can be used: (1) full-time; (2) part-time; (3) geographic area (insurance rating area, state, or multistate area); (4) seasonal; (5) employees in a unit covered by a particular collective bargaining agreement; (6) employees who have not satisfied a waiting period; (7) nonresident aliens who have no U.S.-based income; (8) nonsalaried; (9) salaried; (10) temporary workers of staffing firms; or (11) any group formed by combining two or more of the above classes. The regulations also contain minimum class size rules that would apply in certain cases where ICHRAs are offered to one class of employees and other coverage is offered to another class. Minimum class size varies by employer size.

Employers offering ICHRAs must provide written notices to employees at least 90 days before the beginning of each plan year and in other special circumstances. The rules also contain a model ICHRA notice and instructions.

An ICHRA, integrated with individual coverage or Medicare, is minimum essential coverage that will satisfy the ACA requirement to offer coverage to full-time employees under Section 4980H(a) of the Internal Revenue Code.

**Excepted Benefit HRAs**

On a smaller scale, employers can contribute up to $1,800 per year (indexed starting in 2021) to the confusingly named “excepted benefit” HRAs. These are not limited to dental or vision coverage reimbursements, but instead would themselves qualify as an excepted benefit not subject to certain legal requirements.

Excepted benefit HRAs will be offered in conjunction with traditional group health plans and will allow employers to reimburse additional medical costs such as copays and deductibles. These excepted benefit HRAs can also be used to reimburse employee premiums for short-term limited duration insurance and for other excepted benefits such as dental and vision coverage.

Employees need not actually enroll in other coverage to be eligible for these HRAs, and the funds cannot be used for individual or Medicare premiums or group health premiums other than COBRA premiums. As with ICHRAs, employers must offer these HRAs uniformly offered to all similarly situated individuals.

**Affordability**

ICHRAs raise two separate questions about affordability under the ACA:

Would these plans be “affordable” coverage that would disqualify an employee who has been offered coverage from receiving a premium tax credit (PTC)?

Under the new HRA rules, affordability is based on the cost of single coverage under the lowest-cost silver plan offered on an ACA marketplace in the relevant rating area for an employee. Taking that cost and subtracting the employer HRA contribution
leaves the employee’s required contribution. If that employee contribution is less than 95 percent (indexed for inflation) of the employee’s household income, it will be considered affordable for purposes of eligibility for a PTC.

Would ICHRA coverage be “affordable” for purposes of the ACA requirement that employers generally offer affordable coverage to at least 95 percent of their full-time employees, or risk a penalty under Code Section 4980H(b)?

That question, of keen interest to employers, is left unanswered in the new HRA regulations. The Internal Revenue Service plans to release further guidance on this point.