ACA COMPLIANCE BULLETIN

FINAL RULE EXPANDS OPTIONS FOR HRAs

HIGHLIGHTS

- The rule allows HRAs to be integrated with individual insurance policies.
- The rule also allows employers to offer an excepted benefit HRA with traditional group coverage.
- Specific requirements apply to both types of HRAs.

IMPORTANT DATES

June 13, 2019
The final rule to expand the use of HRAs was issued.

January 1, 2020
The rule takes effect for plan years beginning in 2020.

Provided By:
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OVERVIEW

On June 13, 2019, the Departments of Labor (DOL), Health and Human Services (HHS) and the Treasury (Departments) issued a final rule that expands the usability of health reimbursement arrangements (HRAs). Effective in 2020, the final rule establishes two new types of HRAs:

- ***Individual Coverage HRA***: Allows employers to offer an HRA to be used to reimburse the cost of individual market premiums on a tax-preferred basis, subject to certain conditions, as an alternative to traditional group health plan coverage.
- ***Excepted Benefits HRA***: Allows employers that offer traditional group coverage to provide an HRA of up to $1,800 per year (as adjusted) to reimburse certain qualified medical expenses.

ACTION STEPS

This final rule was issued in response to a 2017 executive order directing federal agencies to expand access to HRAs. The rule is effective for plan years beginning on and after Jan. 1, 2020. Employers can consider whether they could make use of either of these HRA options for employees.

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Background

On Oct. 12, 2017, President Donald Trump issued an executive order that directed the Departments to consider expanding the availability of HRAs and allowing HRAs to be used in conjunction with individual health insurance coverage. HRAs are tax-favored, employer-funded accounts that reimburse employees for health care expenses. Under current regulations, HRAs cannot reimburse employees for the cost of individual health coverage. This final rule is part of the Departments' efforts to implement the executive order's directives.

Individual Coverage HRA

The final rule allows employers to offer a new "individual coverage HRA" as an alternative to traditional health plan coverage, subject to certain conditions. The rule allows these HRAs to be integrated with individual insurance coverage for purposes of compliance with the Affordable Care Act (ACA), eliminating the existing prohibition on this type of arrangement. **This means that HRAs may be used to reimburse employees for the cost of individual health coverage on a tax-preferred basis**, if the following conditions are met:

- ✓ The HRA must require that the participant and any dependents are enrolled in individual health insurance coverage for each month that the individual(s) are covered by the HRA;
- ✓ A plan sponsor that offers an individual coverage HRA to any class of employees may not also offer a traditional group health plan to the same class of employees;
- ✓ If a plan sponsor offers an individual coverage HRA to any class of employees, the HRA must generally be offered on the same terms to all participants within the class;
- ✓ Participants must be allowed to opt out of and waive future reimbursements from the HRA once per plan year (and, upon termination of employment, either the amounts remaining in the HRA are forfeited or the participant is allowed to permanently opt out of and waive future reimbursements);
- ✓ The HRA must implement and comply with reasonable procedures to substantiate that participants and dependents are (or will be) enrolled in individual health insurance coverage for the plan year.

These conditions are intended to mitigate the risk that health-based discrimination could increase adverse selection in the individual market.

Written Notice Requirement

The final rule includes a disclosure provision to ensure that employees understand the benefit. Under this disclosure requirement, an HRA must provide written notice to eligible participants including, among other things, the following information:

- ✓ A description of the terms of the HRA, including the amounts newly made available as used in the affordability determination under the Code Section 36B proposed regulations;
- ✓ A statement of the participant's right to opt out of and waive future reimbursement under the HRA;

- A description of the potential availability of the premium tax credit for a participant who opts out of and waives an HRA if the HRA is not affordable under the proposed premium tax credit regulations; and
- A description of the premium tax credit eligibility consequences for a participant who accepts the HRA.

The HRA must provide the written notice to each participant **at least 90 days before the beginning of each plan year** (or no later than the date the participant is first eligible to participate in the HRA, for participants who are not eligible to participate at the beginning of the plan year). The Departments have provided a model notice with instructions that individual coverage HRAs may use to satisfy this notice requirement.

Substantiation Requirements

Individual coverage HRAs must implement and comply with reasonable procedures to satisfy two substantiation requirements:

- ***The annual coverage substantiation requirement***: The HRA must substantiate that participants and each dependent covered by the HRA are, or will be, enrolled in individual health insurance coverage or Medicare Part A and B or Medicare Part C for the plan year (or for the portion of the plan year the individual is covered by the HRA, if applicable).
- ***The ongoing substantiation requirement***: The HRA may not reimburse a medical care expense unless, prior to the reimbursement, the participant substantiates that the individual on whose behalf the reimbursement is requested is (or was) enrolled in individual health insurance coverage or Medicare Part A and B or Medicare Part C for the month during which the medical care expense was incurred.

Each of these substantiation requirements may be satisfied by a participant attestation, among other permissible methods (such as providing a third party document or, for the ongoing substantiation requirement, direct payment of insurance premiums). 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.

Employee Protections

The Departments are concerned that allowing HRAs to be integrated with individual health coverage could cause employers to encourage higher risk employees (that is, those with high expected medical claims) to obtain individual market coverage, instead of enrolling in the employer-sponsored plan, to reduce the cost of offering the employer-sponsored plan to lower risk employees. As a result, the final rule includes protections to prevent a plan sponsor from steering participants or dependents with adverse health factors away from the employer-sponsored plan and into the individual market.

Excepted Benefit HRAs

In addition, the final rule expands the definition of limited excepted benefits by establishing a certain type of HRA that would qualify as excepted benefits that are not subject to some ACA requirements (called an "excepted benefit HRA"). This change allows employers offering traditional employer-sponsored coverage to offer an HRA of up to $1,800 per year (indexed annually for inflation) to reimburse an employee for certain qualified medical expenses, including premiums for:

- Individual health coverage that consists solely of excepted benefits (such as stand-alone vision and dental plans, accident-only coverage, workers' compensation coverage or disability coverage);
- Coverage under a group health plan that consists solely of excepted benefits;
- Short-term, limited-duration insurance plans; and
- COBRA coverage.

However, an excepted benefit HRA cannot reimburse premiums for individual health coverage, coverage under a group health plan (other than COBRA or other group continuation coverage), or Medicare Parts B or D.

Related Regulations

A number of additional provisions were also included in the final rule relating to the expansion of HRAs, including the following:

- The IRS finalized rules regarding **premium tax credit eligibility** for individuals offered coverage under an HRA integrated with individual health insurance coverage. Generally, an individual who is covered by an HRA integrated with individual health coverage is ineligible for the premium tax credit.
- The DOL finalized a clarification to provide plan sponsors with assurance that the individual health coverage, the premiums of which are reimbursed by an HRA, **does not become part of an ERISA plan**, provided certain conditions are met.
- HHS finalized rules providing a **special enrollment period in the individual market** for individuals who gain access to an HRA integrated with individual health coverage.