

FINAL RULES EXPAND THE USE OF HEALTH REIMBURSEMENT ARRANGEMENTS (“HRAs”)

The Departments of Treasury, Labor and Health and Human Services (the “Departments”) issued [final rules](#) expanding opportunities for employers to utilize Health Reimbursement Arrangements (“HRAs”) to provide health coverage to employees. The new rules allow any employer the ability, under certain conditions, to establish HRAs that may be integrated with individually purchased insurance (on or off an exchange) or Medicare. Furthermore, a new excepted benefit HRA is available to employers who offer traditional group health plans and wish to provide additional tax-favored benefits to employees. The final rules are effective for plan years that begin on and after January 1, 2020.

Employers who may find either new HRA arrangement a potentially desirable component to their employee benefits program should become familiar with and carefully review the requirements to establish and administer the HRA.

Background

By design, HRAs typically place an annual limit (i.e. \$5,000) on the amount of qualified medical expenses that may be reimbursed from the plan – a violation of two key Affordable Care Act (“ACA”) provisions: (1) prohibition on placing annual limits on coverage for essential health benefits, and (2) failing to cover preventive services once the annual limit has been reached by a participant. Current rules consider an HRA to be compliant with the ACA when integrated and used in conjunction with a traditional group health plan¹.

Enacted in 2016, small employers not subject to the ACA employer mandate (less than 50 employees) that do not offer traditional group health coverage may establish Qualified Small Employer HRAs (“QSEHRAs”) that employees can use to cover individual health insurance premiums and qualified expenses. These final HRA rules do not alter the QSEHRA provisions.

Individual Coverage HRAs (“ICHRAs”)

Employers of **any size** will be able to offer employees a “stand-alone” HRA to purchase individual insurance (on or off an exchange), help pay for Medicare premiums and/or be reimbursed for qualified medical expenses. The following are ICHRA highlights and key requirements under the final rules:

- Employers may provide an ICHRA to all employees or to certain classes of employees. Traditional group health coverage may not be offered to employees eligible for an ICHRA. Employees and covered family members must actually be enrolled in individual coverage or Medicare and will be required to provide proof of coverage, generally before the start of each plan year (or initial eligibility) as well as each time reimbursement is requested. Employees may provide, for example an ID card or attest to such enrollment. Model ICHRA attestation language has been drafted by the Departments.
- The ICHRA must be offered on the same terms to all employees in a class. An employer may contribute more for older employees in the class (no more than 3x the benefit for the youngest employee) and/or by number of dependents covered under the plan. Employers may pro-rate the annual reimbursement amount for employees not covered by the ICHRA for the full plan year.
- The ICHRA rules establish the following employee classes: **full-time, part-time, salaried, non-salaried**, seasonal, temporary, employees covered by a collective bargaining agreement, in a waiting period, or whose **primary worksite is in the same rating area**, and non-resident aliens with no U.S. income. Full-time, part-time and seasonal employees must be defined using ACA or section 105(h) definitions. A minimum class size requirement exists when an ICHRA is available to a certain class (**bold type** above) while another class may enroll in a traditional group health plan.

Assume an employer covers **full-time** employees under a traditional group health plan and **part-time** employees an ICHRA. The minimum number of **part-time** employees that must be offered (not actually enrolled) the ICHRA is based on the employer's size at the beginning of the plan year as follows: 10 (employers with less than 100 employees); 10% of the total number of employees (100-200 employees), 20 (200+ employees). The final rules provide numerous examples of how the "same terms" and class size "minimum requirements" apply.

- Employers may, on a prospective basis provide an ICHRA to a new hire sub-class without having to meet the minimum class size. For example, an employer that wishes to offer all full-time employees an ICHRA hired on and after January 1, 2020 while continuing to offer current full-time employees a traditional group health plan would not be subject to the minimum class size requirement, regardless of how many new full-time employees are hired and offered the ICHRA beginning in 2020.
- The ICHRA must allow employees the ability to opt-out of the ICHRA to potentially qualify for premium assistance (if the ICHRA is considered unaffordable) when purchasing coverage from the ACA marketplace.
- An ICHRA should satisfy the ACA employer mandate requirement to offer "minimum essential coverage" to full-time employees. The IRS will issue safe harbor ICHRA affordability guidance for large employers to avoid ACA penalties. In addition, the IRS will address how ICHRAs may satisfy nondiscrimination requirements for self-funded plans under IRC 105(h).
- Employers must issue a notice containing ICHRA details, employee rights, contact information etc. 90 days before the start of the plan year or prior to an individual first becoming eligible for the ICHRA. The Departments have developed a model notice to comply with this requirement.
- An employer can offer both an HSA-compatible ICHRA and more comprehensive ICHRA coverage to a class of employees without violating the ICHRA "same terms" requirement.
- Individually purchased insurance will not be considered an ERISA benefit sponsored by an employer if the purchase of coverage is completely voluntary, the employer does not endorse any specific insurer or product, and employees are informed that individual coverage is not an ERISA plan.

Excepted Benefit HRA ("EBHRA")

Employers can now offer a non-integrated excepted benefit HRA under the following conditions:

- The EBHRA is not an integral part of a group health plan and therefore, a traditional group health plan must be available to employees offered an EBHRA. Employees who elect the EBHRA need not enroll in the traditional group health plan.
- The EBHRA is limited in amount. An initial annual benefit limit of \$1,800 is established for 2020.
- The EBHRA may reimburse for excepted benefits such as limited scope dental and/or vision benefits *as well as other qualified medical expenses that are not considered excepted benefits*. The plan may not be used to reimburse premiums for individual or group health plan coverage (except COBRA or premiums for excepted benefits), or Medicare Parts A, B, C and D. The plan may however, cover cost sharing expenses incurred under these arrangements. Premiums for certain short-term-limited duration insurance may be allowed except by small employers with an insured traditional group health plan.
- The EBHRA must be made available under the same terms as all similarly situated individuals

'An HRA that only reimburses expenses for excepted benefits such as stand-alone dental and/or stand-alone vision expenses is not subject to group health plan integration requirements. These arrangements may continue to be offered and are also not subject to the new excepted benefit HRA requirements ("EBHRA").

ADDITIONAL INFORMATION

For specific questions concerning information contained in this Update, please contact your USI-Chernoff Diamond consultant. Information contained in this Update is not intended to render tax or legal advice. Employers should consult with qualified legal and/or tax counsel for guidance with respect to matters of law, tax and related regulation. Chernoff Diamond is a Division of USI Insurance Services that provides comprehensive consulting and administrative services with respect to all forms of employee benefits, risk management, qualified and non-qualified retirement plans, private client services, and compensation and human capital. For additional information about our services, please contact us at 516.683.6100 or mail@chernoffdiamond.com.