

Proposed Regulations Would Permit Employers to Reimburse an Employee's Premium Costs for a Health Insurance Policy Purchased in the Individual Market

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Takeaway Message: Except in limited circumstances, current regulatory guidance prohibits an employer from maintaining a health reimbursement arrangement (HRA) that reimburses the cost of premiums for individual health insurance policies purchased by employees in the individual market. Proposed regulations (found [here](#)) aim to eliminate this prohibition, if certain conditions are met.

Implications: If these regulations, which are proposed to take effect on January 1, 2020, are finalized in their current form (they cannot be relied on currently), employers may choose to eliminate their group health plan coverage and establish an HRA that reimburses the cost of individual health coverage purchased by employees, if certain conditions are met. The proposed regulations even suggest that the regulators may create special rules that would treat an employer sponsoring one of these HRAs as fully satisfying the Affordable Care Act's (ACA) employer mandate (generally, the requirement that large employers must offer specified health coverage to at least 95 percent of their full-time employees and dependents or risk paying a potential tax penalty). This could potentially lead to a shift from traditional group health plans to a 401(k)-like defined contribution approach towards employer-provided health coverage, likely to be most popular with smaller employers.

Background: An HRA is an account-based health plan funded solely by employer contributions used to reimburse certain medical expenses incurred by eligible employees. Other than certain HRAs maintained by small employers that meet specific qualifications (known as qualified small employer HRAs, or QSEHRAs, as we [previously described](#) in more detail, ACA guidance does not allow employers to maintain an HRA to reimburse the cost of individual insurance policies. Under current ACA guidance, HRAs must be "integrated" with an employer-sponsored group health plan. As noted, the proposed regulations intend to change this, if certain conditions are met.

Required Conditions: The proposed regulations are over 200 pages long and contain several conditions. Below is a summary of some of the most significant conditions that an employer must satisfy in order to maintain one of these HRAs integrated with individual health coverage ("Individual Coverage HRA").

- An Employee Cannot Be Eligible for Both a Group Health Plan and an Individual Coverage

HRA. The employer cannot offer a group health plan and an Individual Coverage HRA to the same class of employees. All employees in a specific class (e.g., full-time, part-time, union employees, etc.) must be eligible for only one of the two.

- Must Be Offered on the Same Terms. The employer must offer the Individual Coverage HRA on the same terms for all employees in a specific class. Most notably, this means that the amount offered to employees in a class must be uniform, except that the proposed regulations allow for variation due to age (recognizing that individual health coverage is more expensive for older employees) and number of dependents enrolled in coverage (recognizing that family coverage is more expensive than self-only coverage).
- Must Verify that Expenses Were Incurred. The employer must verify that employees actually incurred expenses for individual health coverage before reimbursing such expenses. Any set of “reasonable procedures” used to verify should be sufficient.
- Notice Requirement. The employer must distribute a specific notice to employees eligible for the Individual Coverage HRA. The notice must be distributed 90 days before the beginning of each plan year.

Satisfying the Employer Mandate: As noted, the proposed regulations suggest that the final regulations may provide special rules that would treat employers sponsoring Individual Coverage HRAs as fully complying with the ACA’s employer mandate, including the requirement that health coverage must be “affordable” for employees, even if the employer does not sponsor a group health plan at all. However, there is nothing concrete in the proposed regulations to this effect.

Next Steps: Stay tuned. We wait for the final regulations.

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