

New Health Reimbursement Arrangements Coming Soon!

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Recent regulatory guidance (Final Rules) issued by the U.S. Departments of Health and Human Services and Treasury provide for two new types of health reimbursement arrangements (HRAs): the individual coverage HRA and the excepted benefit HRA. The individual coverage HRA (ICHRA) allows employers to offer HRAs that work in conjunction with individual health policies or Medicare. Previously, HRA coverage generally had to be integrated with a qualifying group health plan in order to comply with the Patient Protection and Affordable Care Act (PPACA). The Final Rules also allow certain HRAs to offer limited excepted benefit (EBHRAs).

The Final Rules give employers greater flexibility to offer these new types of HRAs for plan years beginning on and after January 1, 2020.

Individual Coverage HRAs (ICHRA):

In order to be considered an ICHRA an HRA must be considered integrated with individual health coverage or Medicare by meeting the following requirements:

- **Other Coverage Required:** All individuals covered by the ICHRA must be enrolled in individual market health coverage or Medicare for each month an individual is covered by the ICHRA.
- **No Traditional Group Health Plan:** There can be no choice between the ICHRA and traditional group health plan coverage for the same class of employees. The regulations identify rules for setting up different classes of employees within an employer population.
- **Same Terms:** Generally, an ICHRA must be offered on the “same terms” (including both the amount and the same terms and conditions) to all employees within a certain class.

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- **Opt-Out Provisions:** The Final Rules clarify that employers may establish time frames for enrollment in an ICHRA, and that ICHRAs must generally allow participants to opt-out of and waive future reimbursements from an ICHRA upon enrollment, at least once annually, and upon termination of employment. This provision is important for individuals who may want to retain premium tax credit eligibility on an ACA exchange.
 - **Substantiation Procedures:** Employers offering ICHRAs are required to implement and comply with “reasonable procedures” to verify that individuals are enrolled in individual health insurance both on an annual basis and as part of each reimbursement request. The Final Rules include model attestation language employers may rely on to meet this substantiation requirement.
 - **Notice:** A notice must be provided to eligible employees at least 90 days in advance of each plan year informing them that their participation in an ICHRA will make them ineligible for a premium tax credit from an ACA exchange.

Although the ICHRA is designed as an ERISA covered plan, the Final Rules set forth a safe harbor that employers can follow to ensure that the individual health coverage with which the ICHRA is integrated does not become an ERISA plan.

Proposed rules issued in October, which can be generally relied upon for developing 2020 HRA coverage options, clarify that an offer made by an employer to a full-time employee to participate in an ICHRA will be treated as an offer of minimum essential coverage for purposes of avoiding the employer shared responsibility penalty under Code Section 4980H(a). These proposed regulations also provide that an employer can avoid the penalty under Code Section 4980H(b) by using ICHRAs that are considered “affordable” and provide minimum value.

Excepted Benefit HRAs (EBHRA)

An EBHRA allows participants to obtain reimbursement for certain qualified expenses even if they choose not to enroll in their employer’s group health plan coverage.

In a departure from the previous proposed rules, the Final Rules also provide that an EBHRA cannot reimburse short-term plan premiums if (a) the HRA is offered by a fully insured or partially insured small employer, and (b) the reimbursement for short-term plan premiums has significantly harmed the small group market in the employer’s state.

To offer an EBHRA, the following requirements must be met:

- **Not Integral:** The EBHRA must not be an “integral part” of the employer’s group health plan. This means that a plan sponsor must offer other group health plan coverage to the employees who are also offered the EBHRA for a particular plan year. The “other” coverage must not be another account-based group health plan or coverage consisting solely of excepted benefits.
- **Dollar Limit:** An EBHRA would be limited to annual contributions of \$1,800 per year (indexed for inflation after 2020).
- **Reimbursements of Coverage Limited:** An EBHRA may not reimburse premiums for

individual health insurance coverage, coverage under a group health plan (other than COBRA or other group continuation coverage), or Medicare parts A, B, C or D. However, the Final Rules permit reimbursement of premiums for individual coverage that consists solely of excepted benefits or coverage under a group health plan that consists solely of excepted benefits, as well reimbursement of short-term limited-duration insurance premiums and COBRA premiums.

- **Uniform Availability:** Benefits provided under an EBHRA must be made available under the same terms and conditions to all similarly situated individuals, regardless of any health factor.

Employers should work with their benefits counsel to determine whether it is prudent to offer these new benefits to their employee populations.

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