

# Employers Have New Ways to Offer Health Reimbursement Arrangements

Richard S. Chargar, Pamela D. Kaplan, Victoria E. Anderson

August 28, 2019

The Departments of Labor, Health and Human Services and Treasury recently issued joint final regulations expanding the availability of health reimbursement arrangements (“HRAs”) by introducing two new types of HRAs – Individual Coverage HRAs and Excepted Benefit HRAs. The following is a brief overview of the requirements employers must satisfy in order to offer HRA coverage to their employees, and employees’ dependents, under one of these new arrangements.

## Background

HRAs constitute group health plans that are subject to various Affordable Care Act (“ACA”) rules. The ACA rules include prohibitions on capping or requiring cost-sharing for certain benefits (the “Market Reforms”).

Under prior guidance, in order to comply with or avoid the Market Reforms, HRAs generally had to be integrated with other qualifying group health plan coverage or limit the scope of reimbursable expenses to benefits excepted from compliance (e.g., limited scope dental or vision coverage). The new regulations make it easier for employers to offer HRA coverage by providing two new options that do not require integration with a group health plan or limiting the scope of reimbursable expenses.

## Individual Coverage HRAs

Under the new regulations, in order to comply with the Market Reforms, an employer may integrate an HRA with qualifying individual health plan coverage or Medicare (an “Individual Coverage HRA”), if certain conditions are satisfied. This is a departure from prior guidance, which prohibited the integration of HRAs with non-group health plans.

In addition, an offer of an Individual Coverage HRA will count as an offer of qualifying coverage for purposes of the employer mandate under ACA. An employer may still be liable, however, for penalties under ACA if employer contributions to the Individual Coverage HRA are insufficient to satisfy affordability requirements.

In order to establish an Individual Coverage HRA, the following conditions must be satisfied:

- The HRA must require that all HRA participants, and their dependents, be enrolled in qualifying individual health plan coverage or Medicare coverage for each month the individuals are covered by the HRA.
- The employer must verify that all HRA participants, and their dependents, are enrolled in

qualifying individual health plan coverage or Medicare coverage during the plan year.

- The employer cannot offer the HRA coverage to a class of employees (e.g., full-time employees, part-time employees, seasonal employees, etc.) who are also eligible for coverage under the employer's traditional group health plan (i.e., a non-account based group health plan that is not limited to providing excepted benefits).
- The employer must offer the HRA coverage on the same terms to all employees within a class, subject to certain exceptions.
- The employer must provide employees with an opportunity to opt-out of the HRA coverage and waive future reimbursement from the HRA at least annually.
- The employer must provide eligible participants with a notice regarding how the offer of HRA coverage, or enrollment in HRA coverage, affects their ability to claim a premium tax credit on the health insurance marketplace (the "Notice").

If an employer wants to offer an Individual Coverage HRA, they will need to provide the Notice to each eligible participant at least 90 days before the beginning of each plan year, or for individuals not eligible to participate at the beginning of the plan year, no later than the date the participant is first eligible to participate in the HRA.

### **Excepted Benefit HRAs**

The new regulations also allow employers to establish a standalone HRA that will qualify as an excepted benefit not subject to the Market Reforms, if certain conditions are satisfied (an "Excepted Benefit HRA"). An Excepted Benefit HRA can be used to reimburse the same medical expenses as an HRA integrated with a qualifying group health plan, except as described below. Unlike offering an Individual Coverage HRA, offering an Excepted Benefit HRA will not count as an offer of qualifying coverage for purposes of the ACA employer mandate.

In order to establish an Excepted Benefit HRA, the following conditions must be satisfied:

- The employer must offer employees coverage under a traditional group health plan, regardless of whether the employees actually enroll.
- The amount of the employer's annual HRA contribution may not exceed \$1,800 (indexed for inflation starting in 2021).
- The HRA may not reimburse premiums for individual health plan coverage, group health plan coverage (other than COBRA), or Medicare coverage; it may, however, reimburse premiums for excepted benefits or short-term, limited-duration coverage.
- The HRA must provide coverage under the same terms to all similarly situated individuals based on employment-based classifications (e.g., full-time versus part-time status, union members versus non-union members, date of hire), regardless of any health factors.

Unlike Individual Coverage HRAs, Excepted Benefit HRAs are not subject to the 90-day notice requirement and do not affect the ability of eligible participants to claim a premium tax credit on the health insurance marketplace.

Employers who want to offer Individual Coverage HRAs or Excepted Benefit HRAs, may do so starting on **January 1, 2020**. Certain actions, however, need to be taken in advance, such as adopting plan

documents, engaging a third-party administrator, communicating with employees and establishing a process for monitoring enrollment in individual health plan coverage.

If you have any questions regarding offering HRA coverage to your employees, please contact a member of our [Employee Benefits group](#).