New HRA Opportunities for 2020

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HRAs TODAY: 2019

Existing Health Reimbursement Arrangements or HRAs are employer-funded accounts that employees can use to pay out-of-pocked health care expenses, but in most cases, may not be used to pay insurance premiums.

On June 13, 2019, the U.S. Department of Health and Human Services, Labor, and Treasury issued a FINAL RULE allowing employers of all sizes to fund two new kinds of health reimbursement arrangements (HRA), known as:

- **INDIVIDUAL COVERAGE HRA (ICHRA)**
- **EXCEPTED BENEFIT HRA (EBHRA)**

2020

HRAs: 2020

Beginning January 1, 2020, employees will be able to use these new HRA's to purchase certain individual insurance coverage, including insurance purchased on the public exchanges formed under the Affordable Care Act (ACA) as well as other allowable medical expenses.

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INDIVIDUAL COVERAGE HRA

An Individual Coverage HRA or ICHRA is permitted to reimburse employees for the cost of individual insurance as well as medical care expenses that qualify as medical care under Code Section 213(d) for employees and their family members up to a maximum dollar amount that the employer makes available each year.

The employer may allow unused amounts in any year to roll over from year to year.

EMPLOYEE INSURANCE REQUIREMENTS

Employees must enroll in individual health insurance (or Medicare) for each month the employee (or the employee’s family member) is covered by the Individual Coverage HRA. This can be individual health insurance offered on or off an Exchange.

However, it cannot be short-term, limited-duration insurance (STLDI) or coverage consisting solely of dental, vision, or similar “excepted benefits.”

Employers may either offer an ICHRA or a traditional group health plan but may not offer the same employees a choice between the two.

If an employee buys individual health insurance outside an ACA exchange and the HRA doesn’t cover the full premium, the employer could permit the employee to pay the balance of the premium for the coverage on a pre-tax basis through its cafeteria plan, subject to other applicable regulations, according to the agencies' FAQs. However, the tax code states that an employer may not permit employees to make salary reduction contributions to a cafeteria plan to purchase coverage offered through an ACA exchange.

EMPLOYEE CLASSIFICATION & MINIMUM SIZE

The ICHRA must offer such coverage on the same terms to each participant within a permitted class. Employers can create classes of employees around certain employment distinctions, such as the following:

- Full-time Employees
- Part-time Employees
- Employees working in the same geographic location (generally, the same insurance rating area, state or multi-state region).
- Seasonal employees
- Employees in a unit of employees covered by a particular collective bargaining agreement.
- Employees who have not satisfied a waiting period
- Non-resident aliens with no U.S. based income
- Salaried workers
- Non-salaried workers (such as hourly workers)
- Temporary employees of staffing firms, or
- Any group of employees formed by combining two or more of these classes

The minimum class size is

- Ten employees, for an employer with fewer than 100 employees
- Ten percent of the total number of employees, for an employer with 100 to 200 employees, and
- Twenty employees, for an employer with more than 200 employees.

Different employers within a controlled group are permitted to have different class rules.

NEW HIRE RULE

Employers may maintain their traditional group health insurance plan for existing participants, and only offer NEW employees an ICHRA.

ICHRA EMPLOYER CONTRIBUTIONS

There is no minimum employer contribution required. Employers that offer an ICHRA must do so on the same terms for all employees in a class of employees, but they may increase the ICHRA amount for older workers and for workers with more dependents.

REIMBURSABLE EXPENSES

An ICHRA is permitted to reimburse employees for the cost of individual insurance as well as medical care expenses that qualify as medical care under Code Section 213(d) for employees and their family members.

ICHRAs that reimburse solely for individual coverage premiums "would not disqualify contributions to an HSA if the individual otherwise meets the requirements of being enrolled in a high-deductible health plan with no other disqualifying coverage.

However, ICHRAs also can only be used to reimburse medical expenses consistent with existing HRA rules. If the ICHRA reimbursed for first-dollar cost-sharing as well as individual market premiums, it would not be compatible with an HSA.

Under some circumstances, ICHRAs can be used to reimburse premiums for Medicare and Medicare supplemental ("Medigap") health insurance.

MEDICARE

An employer subject to the Medicare Secondary Payer rules may offer an ICHRA to a class of employees which includes some employees who are enrolled in Medicare.

The ICHRA may not limit reimbursement of medical expenses to only medical expenses not reimbursed by Medicare. Thus the ICHRA may be limited to reimbursement of Medicare and Medigap premiums and general medical expenses.

Employers who are not subject to the Medicare Secondary Payer rules may continue to integrate HRA's with Medicare in accordance with IRS Notice 2015-17. The Department of Health and Human Services is expected to issue additional guidance clarifying various issues.

ICHRA OTHER CONSIDERATIONS

Employees who are eligible to participate in the ICHRA must be given the opportunity each year to waive out of the plan.

Employers must provide written notice at least 90 days prior to the start of the Plan Year and provide certain content which summarizes the provisions of the plan. If the HRA is established less than 120 days prior to the beginning of the plan year, the notice may be provided no later than the date on which the plan will take effect for the participant

FINAL RULES CLARIFICATION

As you can imagine, the rules relating to these new HRA's will become clearer and better defined as we approach January 1, 2020. Accordingly, we will be providing updates over the next several weeks so that you will have a better understanding as to how the new HRA's will operate and what opportunities exist for you and your clients.

EXCEPTED BENEFIT HRA

The other HRA which will be available effective January 1, 2020 is an Excepted Benefit HRA (EBHRA). This HRA qualifies as an excepted benefit, which means it can reimburse general medical expenses without integration, so long as it satisfies the applicable guidelines.

EMPLOYEE INSURANCE REQUIREMENTS

Employees must also be offered group health plan coverage from the same employer, but the employee does not have to enroll in that coverage. The employee cannot also be offered an Individual Coverage HRA (ICHRA).

EMPLOYER CONTRIBUTIONS

The maximum annual contribution to the Excepted Benefit HRA is $1,800, adjusted for inflation. This does not include carryover amounts, which may be unlimited. If the employer offers any other HRA to the employee for the same time period (other than one that reimburses only excepted benefits), the aggregate annual contribution for all such HRAs cannot exceed $1,800.

The aggregate $1,800 contribution maximum does not apply to FSAs or HRAs that reimburse only excepted benefits, such as dental or vision benefits.

REIMBURSABLE EXPENSES

The Excepted Benefit HRA may reimburse most Code Section 213(d) medical care expenses incurred by participants; however, it may not reimburse any insurance premiums except COBRA or other continuation coverage premiums,and premiums for plans that only provide excepted benefits (e.g. dental or vision). Thus, IMC premiums, non-COBRA group coverage, and costs of Medicare Parts A, B, C, or D would not be eligible expenses. STLDI coverage could, however, be reimbursed under an Excepted Benefit HRA.

EBHRA EMPLOYEE CLASSIFICATION

Benefits offered must be the same for all “similarly situated” individuals (as defined by the HIPAA wellness nondiscrimination rules). “Similarly situated” employees are employees within the same employment-based classification that is consistent with the employer’s usual practice, such as full-time, part-time, hourly, salaried or worksite location.

OTHER CONSIDERATIONS

ERISA applies to the Excepted Benefit HRAs. The fact that it is an excepted benefit only means it is exempt from the health insurance reforms and HIPAA’s portability and nondiscrimination rules.

Thus, a Form 5500 may be required, requests for reimbursements must be handled in accordance with ERISA’s claims and appeal procedures, and the employer must furnish participants with a summary plan description in accordance with ERISA Section 102.

Unlike an ICHRA there is no exception from the Code Section 105(h) rules. Consequently, if an Excepted Benefit HRA offered a higher benefit to salaried employees than the HRA benefit offered to hourly employees, the Excepted Benefit HRA could be discriminatory with respect to highly compensated employees.

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A Suite of HRA's
to fit all your client's needs

The Harrison Group, Inc. specializes in the technical consultation and design of Health Reimbursement Arrangements. No matter your client's needs, there's virtually an HRA to suit everyone!

Effective January 1, 2020, the following HRAs will be available:

- **HRA INTEGRATED WITH GROUP HEALTH PLAN COVERAGE**
- **RETIREE ONLY HRA**
- **HRA THAT ONLY REIMBURSES EXCEPTED BENEFITS (I.E., DENTAL AND/OR VISION)**
- **QUALIFIED SMALL EMPLOYER HRA - QSEHRA**
- **INDIVIDUAL COVERAGE HRA - ICHRA**
- **EXCEPTED BENEFIT HRA - EBHRA**

Our software platform and HG Advantage Card are currently capable of administering our full suite of HRAs and almost any plan design that your clients select, so you can trust that we can have their plan up and running without delay.

Please contact us with any questions that you have. We will be happy to respond to you in a timely manner.

This document is intended to highlight various employee benefit matters of general interest to our readers. It is not intended to interpret laws or regulations, or to address specific client situations.

Richard H. Miller, Jr., CPA
President
July 3, 2019

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