

Administration Announces Big Changes for Health Reimbursement Arrangements (HRAs)

On October 23, 2018, the Trump Administration released a proposed rule that would expand the use of Health Reimbursement Arrangements (HRAs), starting in 2020, by effectively rolling back Obama era regulations.

Before the Affordable Care Act (ACA)

- HRAs served as a vehicle that allowed employees to purchase a non-group insurance plan of their choice. Employees submitted receipts and employers would then reimburse them for those expenditures with pre-tax dollars. This arrangement was appealing to employers as they could provide employees the means to purchase health insurance without assuming the risk.
- Several requirements in the ACA, including the creation of essential health benefits and removal of annual and lifetime limits on health insurance curtailed this option. HRAs are considered a form of a group plan under the ACA, so that an employer who offered a stand-alone HRA would violate the ACA. HRAs have a limit on spending, which was considered an annual limit even if the HRA was enough to purchase individual market insurance.

The Proposed Rule

- Expands HRAs by removing current rules barring the use of HRAs for purchasing individual market insurance. The rule stipulates that HRAs must be used to purchase individual market insurance and cannot be used to purchase a short-term limited duration insurance plan (STLDI).
- Seeks to prevent discrimination or steering of less healthy employees into other options by placing restrictions on how employers decide who receives an HRA versus traditional group insurance. Employers can only discriminate based on different classes of employees that are defined in the rule. The classes are as follows:
 - Full-time
 - Part-time
 - Seasonal
 - Employees covered by a collective bargaining agreement
 - Employees that have not satisfied a waiting period for coverage
 - Employees who have not attained age 25 prior to the beginning of the plan year
 - Foreign employees who work abroad
 - Employees whose primary site of employment is in the same rating area.

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Employers would be unable to change the reimbursement level of the HRA within a class based on health. Within a class, employers would only be able to alter the level of the HRA based on age and household size, parameters which coincide with the ACA's community rating guidelines for insurers.

- Provides those eligible for premium tax credits in the individual market the ability to opt out of their HRA and into the tax credit. It stipulates that employers must notify their employees if their HRA affects their ability to claim the ACA's premium tax credit, cost sharing reductions, or both.
- Creates Excepted Benefit HRAs so that employers could reimburse employees for various qualified medical expenses. These are HRAs that could be offered on top of an employee's traditional group coverage, Medicare, TRICARE, or individual health insurance coverage. The rule creates stipulations for an HRA to qualify as an Excepted Benefit HRA:
 - Other group plan coverage must be made available to the employee (although this seems to be in contradiction where other sections state that employers could offer an HRA without regard to whether its employees have coverage at all)
 - Employers could not offer more than \$1,800 in 2020 (although this will be indexed for inflation in future years, \$150 per month — it is not a lot of money)
 - The HRA could not be used for premiums for individual health insurance, group health insurance, or Medicare parts B or D
 - The HRA can be used for STLDI or COBRA premiums
 - Excepted Benefits HRAs must have uniform availability — employers cannot discriminate based on health status (the proposed rule requests comment on what additional standards are needed to prevent health discrimination for Excepted Benefit HRAs)

The proposed regulation also eliminates the ACA employer mandate that requires the offering of a health care option to 95% of eligible employees and creates a new standard of affordability of the HRA tied to certain exchange level offerings.

Does this mean employers could offer tax-free money for health benefits completely separate of a qualified individual or group plan? The answer appears to be yes and this proposed rule appears to provide employers who have been effectively forced to either provide benefits or cancel coverage, some flexibility. We will continue to monitor developments on this topic.

What's DinkinThinkin?

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[Please share your thoughts!](#)

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