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BREAKING NEWS

AUGUST 2019

Two New Types Of HRAs Expand Health Reimbursement Arrangements

On October 12, 2017, President Trump issued Executive Order 13813 promoting Healthcare Choice and Competition across the United States. This took the form of a Notice to expand the flexibility and use of HRAs to provide more Americans with additional options to obtain quality, affordable, healthcare.

The proposed rules of this Notice created two new types of Health Reimbursement Arrangements (HRAs). An Individual Coverage HRA and an Excepted Benefit HRA. Both reverse the previous Administration's position on HRAs. The rules are only proposed at this point and the IRS requested comments. WageWorks submitted comments on all aspects of the new HSAs and changes to some of the proposed rules are inevitable. Therefore, employers should not rely on these proposed regulations; and in any event, the rules would be effective for plan years starting on or after January 1, 2020.

Departments of Health and Human Services (HHS), the Treasury Department, and Labor Department proposed new rules on October 23, 2018, that would provide employers with significant new flexibility in how they fund health coverage through HRAs. If finalized, this flexibility would empower individuals to take greater control over what health insurance benefits they receive. The Treasury estimates that more than 10 million employees would benefit from this change within the next decade.

The proposed regulations remove the current prohibition on using HRA funds to purchase individual health insurance coverage; however, an array of stipulations apply to assure these new HRAs do not create an unstable individual market and that they coordinate with current Affordable Care Act premium subsidies. Both HRAs include nondiscrimination rules that limit their use. The proposed nondiscrimination rules are designed to prevent negative consequences against older and sicker individuals and to prevent employers from incenting employees who may be unhealthy or more costly to be removed from the employer's plan.

Individual Coverage Health Reimbursement Arrangement (ICHRA)
The proposed regulations would permit the ICHRA to be integrated with individual health plan coverage in order to reimburse individual coverage premiums and qualified medical out-of-pocket expenses, provided that the ICHRA meets a few conditions.

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First, the employer cannot offer any employee a choice between an ICHRA and employer-sponsored group health plan coverage. Plus, the participants and their dependents must be enrolled in individual health insurance coverage purchased in the individual market. Substantiation of individual coverage must take place at enrollment and with each reimbursement request. WageWorks submitted comments suggesting that existing guidance regarding debit cards be used to create a methodology to allow auto-substantiation of coverage.

The employer must offer the ICHRA on the same terms to all employees in a "class" and employees must have the ability to opt-out of receiving the ICHRA so that they may receive a premium tax credit for coverage purchased in the individual marketplace.

Permissible "classes" of employees are full-time, part-time, seasonal, collectively bargained, under age 25, employees within a 90-day waiting period, foreign and work abroad, and working in the same rating area. There are certain exceptions for age, family size, and former employees. WageWorks' comments included a request that classes be expanded to include salaried and hourly employees.

And finally, employers must provide a detailed written notice to employees at least 90 days before the beginning of each plan year. WageWorks' comments asked that a model notice or model language be provided for employers to use.

Additionally, since the ICHRA is integrated with individual coverage, it is not subject ERISA provided five requirements are met:

Participation in the ICHRA is voluntary;
The employer has no role in the selection or endorsement of any individual coverage products;
There are limits on reimbursements;
The employer receives no consideration from coverage providers; and,
Annual notification is provided.
A section 125 cafeteria premium plan can be offered with an ICHRA for "excess contributions" to cover the premium cost over and above the benefit offered by the employer through the ICHRA. As a reminder, a cafeteria plan cannot be used for exchange coverage premiums.

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Excepted Benefit Health Reimbursement Arrangement (EBHRA)
This HRA reverses the previous Administration's stance by allowing a new type of HIPAA–excepted benefit in addition to current HRAs that offer excepted benefits such as vision and dental.

This new status as an excepted benefit means that the employee who is covered under the EBHRA is not considered enrolled in "minimum essential coverage" and would not be precluded from receiving a premium tax credit on an Exchange. There are five requirements that must be met in order to offer EBHRAs:

The employer must offer other major medical health coverage. However, participants in the EBHRA do not have to be enrolled in the health coverage, they just simply must be offered the coverage;
The HRA is limited to $1,800 annually (not including rollovers from year to year), subject to annual indexing (WageWorks comment letter requested that a higher annual election be considered);
The HRA can reimburse eligible health care expenses and COBRA premiums or contributions, excepted benefit coverage such as dental and vision, and short-term limited-duration insurance (list is not exhaustive);
The HRA may not be used to reimburse premiums or contributions for other medical coverage (individual or group); and
The HRA must be provided on a uniform basis to all similarly situated employees.
With the EBHRA, the employer might want to offer an additional separate HRA that only provides vision and/or dental benefits. This would allow participants to utilize the $1,800 EBHRA limit plus have additional funds available for vision and dental expenses.

HHS also proposes rules that would provide a special enrollment period in the individual market for individuals who gain access to an HRA integrated with individual health insurance coverage or who are provided a QSEHRA.

Plan years for both an ICHRA and EBHRA are generally 12 months. However, they do not have to be on a calendar year and may be a short plan year. Short plan years would need to prorate any annual limits for just the months covered by the short plan year. Note that an employer cannot offer both an ICHRA and an EBHRA to the same class of employees.

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WageWorks sought clarification and changes to these proposed rules and anticipates final regulations sometime in 2019 with the proposed rules allowing employers to offer these coverage options beginning on or after January 1, 2020.

The information contained in this article is not intended to be legal, accounting, or other professional advice. We assume no liability whatsoever in connection with its use, nor are these comments directed to specific situations.

Janet LeTourneau, ACFCI, is the director of compliance services at WageWorks. She draws upon more than 25 years of experience with flexible benefits plans and tax laws to perform consulting services and monitor quality control.

LeTourneau is a frequent speaker to employer groups and conferences and was formerly on the board of directors for the Employers Council on Flexible Compensation (ECFC) and is a current member of the ECFC Technical Advisory Committee (TAC). She is the lead instructor for the Section 125 administrators training workshop.

LeTourneau was one of the first people in the country to earn the Advanced Certification in Flexible Compensation Instruction designation sponsored by the Employers Council on Flexible Compensation. She is a certified trainer in the ACFCI program.

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Mindful Insurance Solutions Inc.
7750 College Town Drive, Suite 101
Sacramento, CA 95826

Office: (877) 223-4437
Fax: (530) 419-4811