



New HRA Rules Issued

Issue Date: October 2018

The Department of the Treasury, Department of Labor, and Department of Health and Human Services (the Departments) have jointly issued proposed regulations designed to expand the use of health reimbursement arrangements (HRAs). The new rules would allow HRAs to be used to pay for individual health insurance policies, create a new type of limited excepted benefit HRA, and allow employees to have premiums for some types of individual policies reimbursed on a pre-tax basis through a Section 125 cafeteria plan.

Background

The proposed rules are in response to President Trump's executive order in October 2017 that directed regulatory agencies to revise existing guidance to "...expand employers' ability to offer HRAs to their employees, and to allow HRAs to be used in conjunction with non-group coverage."

Current regulatory and sub-regulatory guidance issued since 2013 prohibits employers from paying for an employee's individual health insurance policy and requires that HRAs offered to employees must be integrated with group health insurance policies. The new rules add two new HRA options:

1. HRA integrated with ACA-compliant individual health coverage
2. Stand-alone HRA that qualifies as an excepted benefit with an annual maximum funding of \$1,800

New Option #1: HRA Integrated with Individual Insurance Coverage

This option would allow an employer to provide tax-free funding to an employee HRA account that could be used to purchase individual health insurance policies. The rules include provisions designed to limit an employer's ability to steer higher-risk employees to the individual market:

- Employers cannot offer both a traditional group health plan and an HRA integrated with individual insurance to the same employees. Employer must choose to offer a group health plan or the HRA coverage based on specific "classes" of employees, including full-time, part-time, seasonal, union/non-union, employees under age 25, and employees in different rating areas.
- The HRA must be offered on the same terms and conditions to all employees within each class. However, the dollar amount may differ based on age or number of dependents eligible for reimbursement.

Other Rules

- All individuals eligible for reimbursement under the HRA must be enrolled in ACA-compliant individual health coverage and provide proof of that coverage.
- Employees must be able to opt-out of coverage and reimbursement.
- Employers must provide a new notice to participants. The notice must include information such as a description of the terms of the HRA, the maximum dollar amount available, substantiation requirements for reimbursements, the ability to opt-out, information about premium tax credit (PTC) eligibility, and more.
- The individual coverage integrated with the HRA would not be subject to ERISA assuming requirements similar to the DOL voluntary safe harbor requirements are met.

Affordable Care Act Issues

The HRA would be considered an offer of minimum essential coverage (MEC) for purposes of satisfying §4980H(a) employer shared responsibility requirements. If the HRA also provides minimum value and is affordable, the offer would also satisfy Section 4980H(b) requirements. All individual policies sold through a public exchange provide minimum value, so an HRA integrated with one of these policies would automatically meet the minimum value requirement. The rules also contain a proposed methodology for determining if the offer will be considered affordable.

Enrollment in the HRA would cause an employee to lose eligibility for a PTC when purchasing individual health insurance through a public Exchange. In addition, if the HRA provides minimum value and is affordable, an employee would lose eligibility for a PTC even if the individual opts-out of coverage. This is similar to the rules applicable to employer sponsored group health plans. Under current rules, employees are not eligible for the PTC if they are also eligible for affordable, minimum value employer group health coverage, even if they choose not to enroll.

New Option #2: Excepted Benefit HRA

Currently, employers are prohibited from offering a stand-alone HRA to active employees unless it reimburses claims only for limited expenses such as dental and vision. The new rules would allow a stand-alone HRA to reimburse all Section 213(d) expenses and still qualify as an excepted benefit. To maintain excepted benefit status, the HRA must meet certain requirements:

- The maximum benefit cannot exceed \$1,800 for the plan year (indexed annually).
- Employees must be eligible (but not necessarily enrolled) for both the employer's group health plan and the HRA.
- The HRA must be available for all similarly situated individuals, regardless of any health factor.

Pre-Tax Payment of Individual Health Insurance Premiums

In addition to an integrated HRA, employers may also allow employee to pay individual health coverage premiums on a pre-tax basis through a Section 125 cafeteria plan. Employees can pay pre-tax only for individual policies sold outside the public Exchange. The ability to pay for individual health coverage through a cafeteria plan appears to be limited at this time to part premiums owed by the employee as part of an integrated HRA, although the rules requested comments on permitting it as a stand-alone arrangement.

Summary

The new rules make no changes to the employer's ability to integrate an HRA with group health plan coverage. Employers are also still allowed to offer a stand-alone HRA for the reimbursement of excepted benefits, and to offer a full stand-alone HRA to retirees. The Departments are taking comments on the rules through December 28, 2018. Final rules are expected to be issued early in 2019 with an effective date of plan years beginning January 1, 2020.

Please be aware that this does not represent legal or tax advice and is only Frenkel's interpretation of the laws, regulations and statutes. It is highly recommended that you seek the advice of your legal and tax professional as to the applicability of this information to your particular situation.