Final Rule Released on Individual Coverage and Excepted Benefit HRAs

On June 13, 2019 the Department of Labor, the Department of Health and Human Services, and the Treasury Department (the "Departments") released the final rule concerning health reimbursement arrangements (HRA) for individual market coverage and excepted health benefits. The rule, based on an executive order from President Trump in 2017, is intended to increase choice in plan options, which could lead to greater flexibility in choice and provide more affordable healthcare. The final rule impacts many different entities and individuals, including employers, health plan issuers, employees, plan sponsors, and those who purchase individual health plans. This rule is effective for plan years starting January 1, 2020.

Background

An HRA is an account-based health plan that allows employers to reimburse employees for medical care expenses. It is funded solely by employer contributions. Amounts reimbursable under an HRA are typically limited to a certain amount during a certain period (for example, $500 for expenses incurred during a calendar year). Under prior IRS rules issued as part of Affordable Care Act (ACA) implementation, HRAs offerings were limited to an extent. Under those rules, an employer may offer an HRA to employees only if the HRA is "integrated" with a qualifying group health plan. Under the new final rule, some of the restrictions have been eliminated, and the Departments have determined that other types HRAs can be integrated with individual market coverage and Medicare in a way that meets statutory requirements.

Notably, under the final rule, an employer of any size could offer an Individual Coverage HRA that can be used to pay for Medicare (e.g., Parts B and D) and Medicare Supplement premiums, as well as other medical care expenses, without violating the Medicare Secondary Payer rules. However, if the employer offers the Individual Coverage HRA to full-time employees it cannot offer group health plan coverage to that class of employees.

What the Rule Does

The final rule essentially adds two new types of HRAs: The Individual Coverage HRA and the Excepted Benefits HRA.

Individual Coverage HRA

Overall, an Individual Coverage HRA is funded exclusively by the employer and may reimburse employees for medical care expenses, including individual market health insurance premiums. The difference under the new rule is that the employee must be enrolled in individual health coverage (or Medicare) and *not* group health plan coverage. This includes plans purchased on the Marketplace Exchange. It does not include plans that only cover certain excepted benefit, such as dental or vision, or short-term limited-duration plans. An Individual Coverage HRA cannot be offered to employees who are also offered a traditional group health plan. An employer may offer this HRA to different classes of employees (e.g., full-time vs. part-time, salaried vs. hourly) within certain prescribed limits.

While the rule is meant to primarily benefit small and mid-sized employees, large employers may also offer an Individual Coverage HRA. This type of HRA will also be considered an offer of coverage under the ACA for employer mandate purposes. An Individual Coverage HRA can impact eligibility for a premium tax credit; therefore, the employee must have the option to waive or opt-out of future reimbursements. To comply with the employer mandate, the employer should make the determination that the Individual Coverage HRA provides enough contributions for certain Marketplace coverage to meet affordability requirements. Additionally, an employer should have processes in place to verify an employee (and family, if applicable) has individual coverage.

Excepted Benefit HRA

An Excepted Benefit HRA means that an HRA can be offered as an "excepted benefit" by an employer. An "excepted benefit" is an insured or self-insured plan that meets certain requirements but is usually not integral to a major medical health plan. An Excepted Benefit HRA can be used to reimburse medical care expenses in addition to other excepted benefits. The HRA itself is considered an excepted benefit because it is neither integral to a health plan nor is it a health plan itself.

Certain requirements must be met to offer this type of HRA, including that it must be offered to employees along with an option to enroll in a non-excepted group health plan, although enrollment in a group or individual health plan is not required to participate in the Excepted Benefit HRA. This is a significant improvement to HRAs under the final rule. These HRAs cannot be used to reimburse health plan premiums, including Medicare and individual coverage, and can only be used for medical care expenses, COBRA coverage, or premiums under an excepted benefit (e.g., dental, vision or short-term limited duration insurance). Finally, the annual HRA contribution cannot exceed $1,800 (adjusted for inflation starting in 2021).

What Employers Should Expect Next

If an employer wants to offer an Individual Coverage or Excepted Benefit HRA, it is suggested to consult with qualified ERISA counsel. There are additional requirements and guidelines an employer will need to meet in order to comply with the final rule. Special enrollment periods may need to be established in order to allow employees and employers to take advantage of the final rule. The Departments and other federal government agencies, including the IRS, will issue further guidance regarding this rule. Such guidance will be necessary in order to correctly implement either type of HRA under the final rule.

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