

Eye on Washington Regulatory Update



HRA Options for Employers Expanded

On June 13, 2019, the Department of Health and Human Services (HHS), the Department of Labor (DOL), the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) (collectively, the “Departments”) issued final regulations that expanded an employer’s ability to offer health reimbursement arrangements (HRAs) to their employees. The final regulations largely adopted the proposed regulations previously issued on October 23, 2018, making two new types of HRAs available. The first HRA can be used in conjunction with individual market coverage obtained by an employee. The second HRA permits an employer to establish a new type of Excepted Benefits HRA that allows employees to pay for Health Insurance Portability and Accountability Act (HIPAA) excepted benefits and short-term coverage.

Background

HRAs are account-based group health plans funded solely by employer contributions that are generally used to reimburse certain medical expenses incurred by eligible employees and their dependents. An HRA may be designed to allow amounts not expended in one year to carry over to subsequent years.

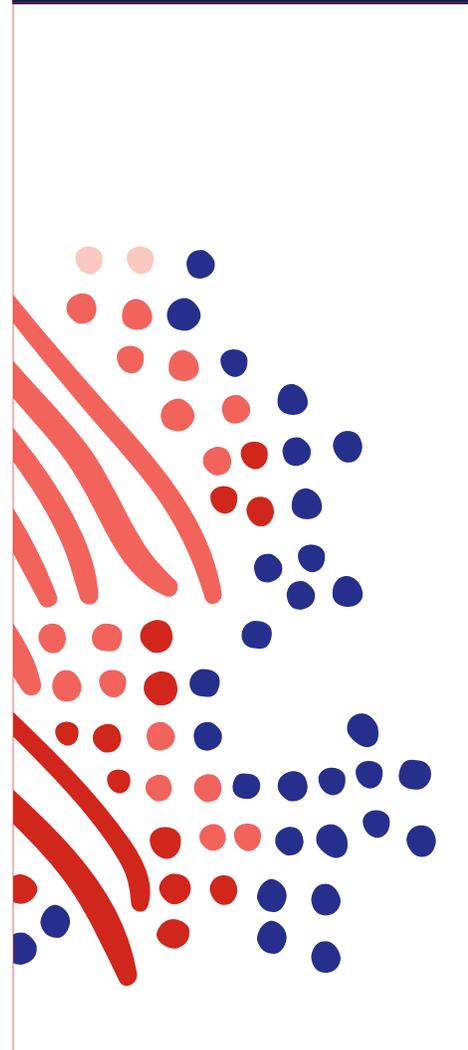
Under prior guidance, employers were not permitted to offer HRAs to enable employees to purchase health insurance of their choice in the individual health insurance market. The Departments referred to these arrangements as “stand-alone” HRAs. The Departments were of the view that stand-alone HRAs failed to satisfy certain provisions of the Affordable Care Act (ACA), including the “annual dollar limit prohibition” and the “preventive services requirement.”

Effective with plan years beginning on or after January 1, 2020, the final rules modify previous agency guidance interpreting the ACA’s insurance market reforms by making it possible for an employer to offer the two new HRA options. This article is intended to provide a high-level summary of the new HRA options.

Individual Coverage HRAs

An Individual Coverage HRA is an HRA that can be integrated with a health plan sold on the individual market, including on one of the ACA Exchanges. The following requirements apply to Individual Coverage HRAs:

- The employee must be enrolled either in individual market coverage (regardless of whether purchased on an ACA Exchange) or in Medicare. The employee must certify that the employee and any dependent eligible for the HRA has individual coverage. A model attestation has been issued for this purpose.
- The employee must not be enrolled in short-term, limited duration insurance or insurance that consists only of excepted benefits.



Eye on Washington Regulatory Update

- The HRA option cannot be offered to employees for whom the employer offers traditional group health plan coverage.
- Employers must offer the HRA on the same terms to all workers within a given class of employees, except that employers may increase the amounts offered in the HRA for older workers or workers with more dependents.
- At least once each year (presumably at open enrollment), a participant who is otherwise eligible for coverage under an Individual Coverage HRA must be permitted to opt-out of and waive future reimbursements on behalf of the participant and his or her dependents.
- The employer must issue a notice annually and at least 90 days in advance of the effective date of coverage describing the interaction of the Individual Coverage HRA with the premium tax credit, among other topics. A model notice has been issued for this purpose.
- The enrollee would need to substantiate their coverage in the individual market. A model substantiation statement has been issued for this purpose.

In addition, if the Individual Coverage HRA does not cover the entire cost of the individual coverage, an employer may allow its employees to enter into a salary reduction arrangement, presumably through the employer's Cafeteria Plan.

Excepted Benefits HRAs

An Excepted Benefits HRA allows employers to reimburse employees' medical expenses that are not covered by insurance, including co-pays, deductibles, and medical care, on a pretax basis. The following requirements apply to Excepted Benefits HRAs:

- The HRA cannot be used to reimburse individual health plan (or Medicare) premiums, but may be used to reimburse premiums for dental, vision, short-term limited duration health plans, and other limited-benefit insurance plans.
- Employers must offer their employees a traditional group plan in conjunction with the Excepted Benefits HRA. However, unlike with a traditional HRA, the employee may decline to participate in the group plan, and still enroll in the Excepted Benefits HRA.
- Contributions to the HRA are capped at \$1,800 per year (indexed for inflation).
- Employers must make the HRA available to all similarly situated individuals.

For a copy of the final regulations and frequently asked questions, please click on the link provided below.

Final Regulations

<https://www.govinfo.gov/content/pkg/FR-2019-06-20/pdf/2019-12571.pdf>

Frequently Asked Questions

<https://www.hhs.gov/sites/default/files/health-reimbursement-arrangements.pdf>

ADP Compliance Resources

ADP maintains a staff of dedicated professionals who carefully monitor federal and state legislative and regulatory measures affecting employment-related human resource, payroll, tax and benefits administration, and help ensure that ADP systems are updated as relevant laws evolve. For the latest on how federal and state tax law changes may impact your business, visit the ADP Eye on Washington Web page located at www.adp.com/regulatorynews.

ADP is committed to assisting businesses with increased compliance requirements resulting from rapidly evolving legislation. Our goal is to help minimize your administrative burden across the entire spectrum of employment-related payroll, tax, HR and benefits, so that you can focus on running your business. This information is provided as a courtesy to assist in your understanding of the impact of certain regulatory requirements and should not be construed as tax or legal advice. Such information is by nature subject to revision and may not be the most current information available. ADP encourages readers to consult with appropriate legal and/or tax advisors. Please be advised that calls to and from ADP may be monitored or recorded.

If you have any questions regarding our services, please call 855-466-0790.