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Digging into the New HRA Regulations Part 1 – Individual Coverage HRAs

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As discussed in our June 18th blog entry, the Departments of Labor, Health and Human Services, and Treasury (collectively, the "Departments") recently released final regulations expanding the use of health reimbursement arrangements ("HRAs"). Among the more important aspects of the final regulations was the reversal of long-standing Affordable Care Act ("ACA") policy that HRAs or premium payment plans could not be used to reimburse premiums paid for individual market coverage. Through "Individual Coverage HRAs," employers may now create HRAs to allow some or all of their employees to purchase insurance on the individual market. This blog entry summarizes the key characteristics and design considerations for Individual Coverage HRAs.

Integration with Individual Coverage

In general, HRAs cannot comply with the ACA's market reforms (particularly the preventive care coverage requirement and the prohibition on annual and lifetime dollar limits) on a stand-alone basis. In order to comply with the ACA, HRAs must integrate with ACA-compliant coverage. Prior to the new regulations, HRAs could only integrate with group health plans and, in limited situations, Medicare. The new Individual Coverage HRAs can integrate with:

- individual insurance coverage purchased on the ACA marketplace;
- individual insurance coverage purchased outside of the ACA marketplace (including on a private exchange);
- student health insurance coverage;
- individual insurance coverage obtained in states that have received a waiver (called a Section 1332 waiver) of certain ACA requirements from the Departments;
- individual catastrophic coverage;

- “grandmothered” coverage (i.e., non-grandfathered coverage that is not compliant with ACA but that the Department of Health and Human Services has announced it will not take enforcement action on); and
- coverage under Medicare Parts A, B, C, or D and Medigap.

Individual Coverage HRAs may not, however, be integrated with short-term limited duration insurance or excepted benefit coverage. A second type of HRA created by the final rule, the “Excepted Benefit HRA” can be integrated with such coverage and will be discussed in greater detail in a later part of this series.

Employees are not required to prove that the integrated individual insurance coverage complies with the ACA. Instead, the regulations include a “proxy” rule that deems all eligible individual health insurance coverage as complying with ACA restrictions on lifetime and annual dollar limits and first dollar coverage of preventive care services.

Individual Coverage HRA Design and Eligibility

The final regulations establish several requirements for Individual Coverage HRAs. These include:

- Employers can specify the maximum annual HRA allocation and define which expenses can be reimbursed through the HRA.
- To be eligible, employees cannot also be eligible for a traditional group health plan sponsored by their employers.
- Employees must be enrolled in individual health insurance coverage and be able to substantiate enrollment both annually and with every request for reimbursement. If an individual covered by the HRA fails to have individual health insurance coverage for any month, the HRA would not comply with the ACA for that month, and the participant could not seek reimbursement under the HRA for claims incurred after the individual coverage ceases. Further, if an entire family covered by the HRA no longer has individual coverage, the HRA will be forfeited. If the HRA is forfeited in this manner, the loss of coverage under the HRA is not a COBRA qualifying event that would allow the individual(s) to continue reimbursements.
- Employers must offer Individual Coverage HRAs on the same terms to all members of a permissible class (as identified in the regulations), except that the amounts offered may be increased for older workers (maximum ratio of 3:1) and for workers with more dependents within a class. Permissible classes include full-time employees, part-time employees, classes based on geographic areas, seasonal

employees, employees covered by a collective bargaining agreement, salaried workers, non-salaried workers, temporary employees, alien employees, etc. Each employer can choose to which classes of employees it wishes to offer Individual Coverage HRAs.

- If an employer makes Individual Coverage HRAs available to some classes of employees and a traditional group health plan to other employee classes, a "minimum class size requirement" will apply. The minimum number of employees for each class varies depending on the employee population. For example, the minimum class size is ten employees, for an employer with fewer than 100 employees; ten percent of the total number of employees, for employers with between 100 and 200 employees; and 20 employees, for employers with more than 200 employees. If the minimum class size requirement is violated, the classes chosen by the employer will be disregarded such that all of the employees will be treated as a single class of employees with varying terms within that class; therefore, the Individual Coverage HRA will not satisfy ACA requirements.
- Employees must be given the opportunity to opt-out of Individual Coverage HRAs on an annual basis and waive future reimbursements.

Eligible Reimbursements

In general, Individual Coverage HRAs can reimburse eligible employees for individual market insurance premiums and other eligible medical expenses. The IRS's Publication 502 defines which medical expenses may be reimbursed under an HRA. Employers are not required to permit reimbursement for all medical expenses. When designing Individual Coverage HRAs, employers can limit reimbursements to insurance premiums. Alternatively, reimbursements could be limited to insurance premiums and point-of-sale out-of-pocket costs (such as copayments, deductibles, or coinsurance).

Notice of Independent Coverage HRA Availability

The final rule requires that employers offering Individual Coverage HRAs provide written notice at least 90 days before the beginning of each plan year to participants. Participants who do not receive the notice because they were not eligible when the notice was sent should receive the notice no later than the date the HRAs become effective for them.

The regulations require that the annual notice contain the following:

- an explanation of the HRA terms and conditions;

- the maximum annual allocation;
- a statement and explanation regarding the different kinds of HRAs;
- a statement that the HRA cannot integrate with short-term limited-duration insurance;
- a statement as to whether the HRA is subject to ERISA;
- a statement regarding the impact the HRA will have on premium tax credit availability;
- information as to how participants can enroll in individual coverage on the ACA marketplace and elsewhere; and
- information related to the participants' coverage substantiation obligation.

To help employers comply with the notice requirement, the Departments have issued a model notice which contains language addressing certain elements of the required notice. The notice must be tailored to the specific terms of the HRA. Employers do not have to use the model notice, but if the model notice is tailored to the HRA and provided timely, they will be considered to be in good faith compliance with the notice requirement. The model notice can be found at the end of Frequently Asked Questions published by the Departments.

Substantiation Requirement & Model Notices

As noted above, Individual Coverage HRA participants must substantiate their enrollment in individual coverage both annually and on an ongoing basis. In that regard, the Departments have issued a model attestation form for Individual Coverage HRAs. The model annual substantiation form identifies who in an employee's is covered by the individual insurance, the name of the insurance company, and when coverage began. With respect to the ongoing substantiation requirement, the Departments issued a model attestation form similar to the annual one. However, the final regulations state that the ongoing attestation could be simply part imbedded in the reimbursement request form.

Other Considerations

Individual Coverage HRAs will impact compliance with the ACA's employer shared responsibility mandate and how individual interact with the ACA marketplace (i.e., availability of premium tax credits and special enrollment). Additionally, these HRAs give rise to ERISA, COBRA, and Medicare implications. These issues will be addressed in upcoming blog entries. Stay tuned.

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