

Digging into the New HRA Regulations Part 4: Excepted Benefit HRAs

Employee Benefits & Executive Compensation Blog on **August 8, 2019**

New regulations issued by the Departments of Labor, Treasury, and Health and Human Services (the “Departments”) have expanded the use of health reimbursement arrangements (“HRAs”), including permitting the use of HRAs to reimburse premiums for [individual health insurance coverage](#). As part of this expansion, and recognizing that some employers might want the flexibility to offer a limited scope HRA alongside traditional group health plan coverage, the Departments established a new type of excepted benefit – an “Excepted Benefit HRA.”

Prior to the new regulations, HRAs could be designed to excepted benefits (such as limited scope vision and dental coverage) only. Unlike those HRAs, Excepted Benefit HRAs can be used to reimburse expenses that are not necessarily related to excepted benefits (e.g., cost sharing, deductibles, and other non-covered medical expenses). However, Excepted Benefit HRAs must satisfy the following requirements in order to reimburse these medical expenses:

- *Otherwise Not an Integral Part of the Plan:* To satisfy this condition, the employer must offer traditional group health plan coverage (i.e., coverage that is not limited to excepted benefits and that is not an HRA or other account-based group health plan) to the participants offered the Excepted Benefit HRA. However, unlike Individual Coverage HRAs discussed in prior blogs, there is no requirement that the participant be enrolled in the traditional group health coverage in order to participate in an Excepted Benefit HRA.
- *Limited in Amount:* The amount made newly available in an Excepted Benefit HRA for a plan year cannot exceed \$1,800 (indexed for inflation for plan years beginning after December 31, 2020). Recognizing that plan sponsors need time to prepare and implement changes relating to the annual limit, the IRS and the Department of Treasury committed to publishing the adjusted amount for plan years no later than June 1 of the preceding calendar year.

- *Limitations on Reimbursement for Certain Types of Coverage:* An Excepted Benefit HRA cannot reimburse premiums for Medicare Parts A, B, C and D, individual health insurance coverage, or coverage under a group health plan (other than COBRA), although it can reimburse premiums for excepted benefits (such as dental and vision coverage). The agencies recognized concerns from commenters that reimbursing short-term limited duration insurance (STLDI) premiums could destabilize the ACA Marketplace, but the final regulations nevertheless allow reimbursement of STLDI premiums. However, if evidence later shows that the insurance marketplace has been adversely impacted, the agencies could issue guidance prohibiting STLDI premium reimbursement.
- *Uniform Availability:* The employer must make an Excepted Benefit HRA available under the same terms to all similarly situated individuals, without consideration of health status. For purposes of this rule, “similarly situated individuals” is defined by reference to the definition of “similarly situated individuals” in the HIPAA nondiscrimination rules. Generally, this means that the terms of Excepted Benefit HRAs can vary among distinct groups of participants, provided that the distinction is based on a bona fide employment-based classification consistent with the employer’s usual business practice (e.g., full-time versus part-time status).
- *Cannot be Offered with an Individual Coverage HRA.* Employers may only offer Excepted Benefit HRAs to employees if traditional group health coverage is also offered to the employees who are eligible to participate in the Excepted Benefit HRA. In contrast, employers cannot offer Individual Coverage HRAs to employees who are also eligible for traditional group health coverage sponsored by their employers. Therefore, employers cannot offer both Individual Coverage HRAs and Excepted Benefit HRAs to the same employees.

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Addition of the Excepted Benefit HRA gives employers the ability to offer a flexible, limited-scope HRA to employees. Although the amount available for each plan year is limited, amounts in an Excepted Benefit HRA may be rolled over and accumulated from year-to-year (unlike health care flexible spending accounts, which are “use it or lose it” accounts, subject to limited designed-based carryovers or grace periods). Further, employees covered by Excepted Benefit HRAs are eligible to make contributions to health savings accounts, assuming the individual does not otherwise have disqualifying coverage.

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