HRAs, ICHRAs, AND OTHER EMPLOYER REIMBURSEMENT ARRANGEMENTS

For plan years beginning on or after January 1, 2014, many HRAs and other types of employer reimbursement arrangements are prohibited.

Many employers seek ways to reimburse their employees' qualified medical expenses on a tax-advantaged basis without violating two key ACA requirements: the prohibition on annual dollar limits for essential health benefits and the requirement to cover preventive services at zero cost-sharing. There are several ways to do this, and chief among them is through a Health Reimbursement Account (HRA). This self-insured benefit has many names, but it is fundamentally an account funded solely by an employer that can be designed to reimburse medical expenses incurred by employees and their dependents. This publication describes the general compliance considerations regarding HRAs, including a discussion of Individual Coverage HRAs (ICHRAs) and other permissible employer reimbursement arrangements. It includes a chart of **Employer Reimbursement Arrangements** (Appendix A), which indicates whether several different types of employer-funded arrangements are allowed under the ACA, and a chart of **IRS Limits on Health Reimbursement Arrangements (HRAs)** (Appendix B).

Since HRAs are self-insured, employers that sponsor them should note their obligation to pay annual fees based on the HRA covered life headcount in connection with the Patient-Centered Outcomes Research (PCOR) Institute, which conducts outcomes-based research for clinical effectiveness. This point is especially important for employers with fully insured medical plans who otherwise satisfy PCOR fee obligations indirectly through the insurer. For further information about PCOR fees, see the PPI publication **ACA: A Quick Reference Guide to the PCOR Fee**. For general information about other types of programs and services that add value to an employer's major medical plan or benefits program, see the PPI publication **Point Solution Programs: A Guide for Employers**.

WHAT IS AN "INTEGRATED" HRA?

In order to comply with the ACA requirements noted above, HRAs must be integrated; basically, an integrated HRA is one that is connected to and reimburses expenses for a group health plan. To be considered an integrated HRA, all five of the following requirements must be met:

1. The employer must offer the employee a group health plan (other than the HRA) that does not consist solely of excepted benefits.
2. The employee receiving the HRA must be enrolled in (not simply eligible for) a group health plan other than the HRA; that group plan may be sponsored by another party, such as the employer of an employee's spouse or domestic partner.
3. The HRA must be available only to employees who are enrolled in non-HRA group coverage.

4. The HRA must reimburse only copayments, coinsurance, deductibles, and premiums under the non-HRA coverage. (This requirement does not apply if the coverage in requirements 1 through 3 provides "minimum value.")
5. The HRA at least annually (and upon termination of employee) must permit the employee to permanently opt out or waive future HRA reimbursements.

If the HRA is integrated per the above requirements, then employers can sponsor the HRA without risking liability under the ACA requirements relating to annual dollar limits and preventive services. Information regarding benefits available under an integrated HRA should be reflected in the SBC for the corresponding medical plan. An HRA that does not meet the requirements for integration with an underlying group health plan is otherwise prohibited under the ACA.

WHAT IS AN EXCEPTED BENEFIT HRA (EBHRA)?

In contrast to an integrated HRA, an EBHRA is a stand-alone HRA that can be offered to all employees and eligible dependents who are offered the employer's group health coverage, regardless of whether or not they enroll in such coverage. The "excepted benefit" status means the EBHRA is not subject to ACA requirements (including PCOR fees), but ERISA and COBRA still apply. However, a limitation of the EBHRA is that the maximum benefit per employee is capped at limits indexed annually by the IRS. (See Appendix B, **IRS Limits on Health Reimbursement Arrangements (HRAs)**.) The EBHRA must be offered on the same terms to all similarly situated employees. Note that the regulations specify that if individuals have a choice of two or more benefit packages, individuals choosing one benefit package may be treated as one or more groups of similarly situated individuals distinct from individuals choosing another benefit package.

WHAT IS AN INDIVIDUAL COVERAGE HRA (ICHRA)?

An ICHRA is the only way an employer may reimburse an employee or directly pay the cost of an employee's individual health insurance policy or Medicare premium on a tax-advantaged basis. To do so outside of an ICHRA, an employer risks an excise penalty of up to $100 per day per employee for an impermissible employer payment plan.

ICHRA Basic Requirements

An employer must meet all of the following requirements to sponsor an ICHRA:

1. No traditional group health plan (that is neither limited to excepted benefits nor account-based) can be offered to the class of employees who are offered the ICHRA.
2. Permitted classifications include full-time, part-time, seasonal, hourly, salaried, collectively bargained, nonresident aliens with no US-based income, employees whose primary site of employment is in the same rating area, and employees who have not yet satisfied an ACA-compliant waiting period. Note that under Section 414, employee classes are determined at the common-law employer level rather than on a controlled group basis.
3. The minimum class size is 10 for an employer with fewer than 100 employees; a number (rounded down to a whole number) equal to 10% of the total number of employees for an employer with 100 to 200 employees; and 20 for an employer with more than 200 employees.
4. The employee must be enrolled in individual health coverage or Medicare (Parts A and B or Part C) and must substantiate such enrollment annually, generally no later than the first day of the plan year or before the date when the ICHRA coverage begins.
5. The ICHRA must be offered on the same terms and conditions to all employees within a class.
6. Employees must have the ability to waive coverage under the ICHRA. However, an employer cannot provide a cash incentive if employees opt out.
7. An employer must distribute a notice to employees regarding the ICHRA's benefits. The notice must be provided to eligible employees at least 90 days before the beginning of each plan year or no later than the date an employee is first eligible to participate in the ICHRA. See a link to the ICHRA model notice in the Resources section below.
8. An ICHRA is subject to ERISA, including the SPD, Form 5500, and plan fiduciary requirements.
9. An ICHRA is also subject to COBRA, including the initial COBRA notice and COBRA election notice. Failure to maintain individual medical coverage is not a COBRA qualifying event.
10. An ICHRA is subject to ACA requirements, including PCOR fees.

ICHRAs and Medicare Secondary Payer (MSP) Rules

MSP rules generally prohibit employers from offering financial incentives to Medicare-eligible employees to waive or cancel coverage in an employer-sponsored group health plan. (As a reminder, age-based MSP rules apply to employers with 20 or more employees, while disability-based MSP rules apply to employers with 100 or more employees.) However, employers subject to the MSP rules may offer ICHRAs to a class of employees without violating the MSP rules if all employees in the class are offered the ICHRA on the same terms.

The idea is that if an employer only provided the ICHRA to those employees who are not Medicare-eligible, it could be seen as discriminating against those employees. Second, allowing the ICHRA to reimburse Medicare expenses does not incentivize them to enroll in Medicare if the opportunity to enroll in the ICHRA is available to everyone in the class. Importantly, employers that are subject to the MSP rules must allow employees in a class that is offered an ICHRA to enroll in either individual or Medicare coverage.

ICHRAs and the ACA Employer Mandate

An ICHRA may be used to satisfy an employer's obligation under the ACA's employer mandate. An ICHRA is considered minimum essential coverage (MEC) for purposes of Penalty A. It also satisfies Penalty B if the employee's required contribution after the employer's monthly ICHRA contribution is less than 8.39% (2024) or 9.02% (2025) of the employee's earnings. The employer may use the lowest-cost silver plan available in the worksite rating area based on the employee's age as a safe harbor (rather than each residential area). The difference between the employer's contribution and the premium cost is reported on Line 15 of Forms 1095-C for purposes of affordability.

WHAT IS A QUALIFIED SMALL EMPLOYER HRA (QSEHRA)?

A QSEHRA is a type of stand-alone HRA available exclusively to small employers (i.e., those that did not have 50 or more full-time employees, including full-time equivalent employees, during the preceding calendar year and thus do not meet the ACA definition of an ALE). It allows eligible employers to help employees purchase individual major medical coverage and pay for certain other medical expenses, subject to several restrictions that may make QSEHRAs less attractive than ICHRAs for many employers. For example, employers that offer a group health plan to any of their employees (including any other group health plan within their controlled group) cannot also sponsor a QSEHRA. Unlike ICHRAs, QSEHRAs can only be funded through direct employer contributions. Note that some states treat coverage paid by an employer as group health insurance, even if the employer is funding individual coverage, which effectively prohibits this arrangement, so employers should review applicable state law before establishing a QSEHRA. The maximum QSEHRA benefit per employee is capped at limits indexed annually by the IRS. (See Appendix B, **IRS Limits on Health Reimbursement Arrangements (HRAs)**.)

QSRHRAs are subject to all ACA requirements, including PCOR fees; they are also subject to ERISA and COBRA rules.

MAY EMPLOYERS SPONSOR AN HRA FOR EMPLOYEES WITH OTHER GROUP HEALTH COVERAGE?

An HRA may be integrated with other group health coverage (such as a group health plan offered by an employee's spouse or domestic partner). Employers that implement this plan design should obtain a signed certification and/or proof of the other group coverage. Employers should consider including in the certification a requirement to notify them promptly if the other group health coverage is terminated. Employers should remember that they must also offer their own group health coverage to HRA-eligible employees.

IS A DEFINED CONTRIBUTION ARRANGEMENT ALLOWED UNDER THE ACA?

Yes, provided it is structured properly. An HRA that provides a defined contribution or reimbursement toward individual coverage (both inside and outside the exchanges) is prohibited under the ACA. However, employers can implement a defined contribution strategy through a private exchange or through a SHOP. This approach allows employers to limit their financial exposure by providing employees a fixed-premium percentage of the selected plan. (See additional information about private exchanges and SHOP plans in Appendix A, **Employer Reimbursement Arrangements**.) Defined contribution arrangements may not be subject to the limitations on HRAs as described in this publication; however, they may be subject to other limitations and groups should consult with outside legal counsel before implementing them.

MAY EMPLOYERS ESTABLISH A HEALTH FSA FOR USE IN REIMBURSING PREMIUMS ELSEWHERE?

No. Health FSA funds (whether employer- or employee-funded) may not be used to reimburse employees for health insurance premiums under the employer's plan or under any other plan. Employers may establish a health FSA for reimbursement of employees' qualified medical expenses, provided the FSA is structured as an excepted benefit.

WHAT IS THE DOL VOLUNTARY SAFE HARBOR THAT MUST BE SATISFIED FOR EMPLOYERS TO FORWARD POST-TAX EMPLOYEE SALARY REDUCTIONS DIRECTLY TO AN INSURER AS PREMIUM PAYMENTS?

The DOL voluntary safe harbor turns on the presence of certain factors but generally requires employers to have minimal involvement in and endorsement of the plan. To satisfy the safe harbor, the following requirements must be met:

- No employer contributions (i.e., must be 100% after-tax employee contributions)
- Employee participation must be completely voluntary
- Employer may not endorse the program
- Employer may not profit from the arrangement

Since the safe harbor is a facts-and-circumstances analysis that depends on the specific situation, employers should consult with legal counsel.

SUMMARY

Employers that sponsor HRAs and other reimbursement arrangements should be mindful of the compliance considerations related to these benefits, particularly under the ACA and Section 125.

RESOURCES

IRS Notice 2013-54

DOL Technical Release 2013-03

Federal Register 77632

FAQs about Affordable Care Act Implementation (Part XXII)

Individual Coverage HRA Model Notice

IRS Notice 2015-17

IRS FAQs on Employer Health Care Arrangements

PPI BENEFIT SOLUTIONS

APPENDIX A

Employer Reimbursement Arrangements

Arrangement	Allowed Under ACA?
HRAs	
HRA used to purchase individual health policies in the private market.	No. Violates ACA.
HRA used to purchase individual health policies through a private or public exchange.	No. Violates ACA.
HRA used to purchase coverage under an employer's group health plan.	Yes, if integrated with group health plan.
HRA used to purchase coverage under a group health plan in a private exchange.	Yes, if integrated with group health plan.
HRA used to purchase coverage under a group health plan in the public exchange (available to certain small businesses participating in a Small Business Health Options Program (SHOP)).	Yes
Limited-purpose HRA (e.g., one that reimburses only dental or vision expenses).	Yes, provided the HRA requires a separate election from other group health plan with which it is integrated.
Stand-alone retiree-only HRA.	Yes. Exempt from ACA.
Section 125 Cafeteria Plans	
POP used to purchase individual health policies in the private market.	No. Violates ACA.
POP used to purchase individual health policies through the public exchange.	No. Exchange coverage is not a qualified benefit under Section 125.
POP used to pay employer-sponsored group health coverage, including using a defined contribution or private exchange platform.	Yes
Other Employer Reimbursement Arrangements	
Payroll practice of forwarding post-tax wages to a health insurer for an individual health policy.	Yes, if DOL voluntary safe harbor is met.
After-tax premium reimbursement arrangement.	No. Federal guidance states even after-tax arrangement violates ACA.
Grossing up salaries (i.e., taxable wages) and having employees pay for their own individual coverage.	Yes
Payment of COBRA coverage under prior employer's plan — amounts not included in employee's gross income.	No. This is considered an HRA and violates ACA. (Employee may, however, use any HSA balance to pay COBRA premiums.)
Payment of COBRA coverage under prior employer's plan — amounts included in employee's gross income.	Yes
Payment or reimbursement of Medicare Part B/D or TRICARE premiums.	Yes. Allowed per IRS Notice 2015-17, but only for small employers (those not subject to Medicare Secondary Payer and/or TRICARE rules).
Employer pays 100% of premium directly to insurer for an individual plan — amounts not included in employee's gross income.	No. This is considered an HRA and violates ACA.

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APPENDIX B

IRS Limits on Health Reimbursement Arrangements (HRAs)

	2025	2024	2023
Excepted Benefit HRA (EBHRA)			
Maximum annual EBHRA reimbursement*	TBD	$2,100	$1,950
Qualified Small Employer HRA (QSEHRA)			
Maximum annual QSEHRA reimbursement**			
Single	TBD	$6,150	$5,850
Family	TBD	$12,450	$11,800

*For EBHRA plan year beginning in year indicated.

**If a QSEHRA is offered on a non-calendar year basis, the maximum annual reimbursement is prorated based on the number of months in each portion of the two applicable calendar years. Alternatively, employers can use the maximum annual reimbursement for the calendar year in which the plan year begins for the entire plan year.

The chart above is excerpted from the PPI publication **Employee Benefits Annual Limits**. See that publication for other annual limits that affect group health plans.

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