FINAL REGULATIONS ISSUED ON HEALTH REIMBURSEMENT ARRANGEMENTS (HRAs)

June 14, 2019

New rules released June 13 by the Departments of Labor, Health and Human Services, and the Treasury will permit employers to offer a new “Individual Coverage HRA” (“ICHRA”) as an alternative to traditional group health plan coverage, subject to certain conditions. Additionally, the new rules create “Limited Excepted Benefit HRAs” (“LEBHRA”), through which employers will be able to help cover the cost of co-pays, deductibles, or other expenses not covered by a primary group health plan even if an employee does not enroll in the primary plan. Employers will be able to offer the new HRA options starting January 1, 2020.

BACKGROUND

An HRA is an arrangement where an employer reimburses participants for certain eligible medical expenses. The Affordable Care Act (ACA) and related agency guidance made offering HRAs tricky for many employers since HRAs, by design, violate the ACA prohibitions on annual limits on medical expenses unless the HRA is properly integrated with other group health coverage. In addition, the rules prohibit HRA from being integrated with individual health insurance.

INDIVIDUAL COVERAGE HRA

Beginning January 1, 2020, employers can offer certain classes of employees an ICHRA as long as:

- The purchase of individual insurance is voluntary;
- An employer does not select or endorse any particular issuer or insurance coverage;
- The individual insurance does not consist solely of excepted benefits (e.g., dental or vision coverage);
- An employer receives no consideration in cash or other form based on an employee’s selection of individual coverage; and
- An employer notifies employees annually in writing (either no later than 90 days before the start of a plan year or no later than the date the HRA will take effect for individuals not eligible at the beginning of a plan year) that:
  - Describes the HRA terms including maximum dollar amount available;
  - Notifies individuals that they must have individual insurance coverage (or Medicare) that is not Short-term Limited Duration Insurance (STLDI) or solely excepted benefits;
  - States that individual insurance is not subject to Title I of ERISA;
  - Provides the ICHRA effective date, plan year start and end date and when ICHRA amounts are newly made available;

- Explains the right to waive and opt out of future reimbursements;
- Explains the impact of the ICHRA on Premium Tax Credit availability on the Marketplace;
- Provides the coverage substantiation requirements for reimbursing claims;
- Tells individuals about what happens when they lose individual insurance coverage and when they must notify the employer of such loss;
- Specifies contact information for more details regarding the ICHRA; and
- Describes the special enrollment period to get individual coverage if newly eligible for the ICHRA.

DOCUMENTATION OF COVERAGE

To qualify for an ICHRA, an individual must be enrolled in individual health insurance that provides greater than excepted benefits and must certify to an employer that he or she actually has or will have such coverage. An employer may rely on a third-party document showing effective individual insurance coverage or on an employee's attestation that he or she has such coverage.

PERMITTED CLASSES OF EMPLOYEES

Employers cannot offer the same class of employees a traditional group health insurance plan and an ICHRA. But employers may offer a traditional group health insurance plan to a permitted class of employees, and an ICHRA to another permitted class of employees. For this purpose, the permitted classes are:

- Full-time
- Part-time
- Seasonal
- Salaried
- Non-salaried
- Those covered by a collective bargaining agreement
- Employees in a waiting period
- Non-resident aliens with no U.S.-based income
- Employees in same rating area (45 CFR 147.102(b))
- Employees of a temporary agency placed at an entity that is not their common law employer

A class must be a certain minimum size if an employer offers traditional group health coverage to one or more classes of employees and offers an ICHRA to one or more other classes and those classes are full-time, part-time, salaried, non-salaried or employed in same geographic rating area. The minimum class sizes are:

- 10, for employers with fewer than 100 employees;
- A whole number rounded down equal to 10% of employees, for an employer with 100-200 employees; and
- 20, for employers with more than 200 employees.

Employers must offer the same terms and condition to all members of a specified class, but can vary the amounts available to class members based on family size and age.

APPLICATION TO ACA EMPLOYER SHARED RESPONSIBILITY RULES

Newly issued IRS FAQs explain that an offer of an ICHRA counts as an offer of coverage pursuant to the ACA's employer shared responsibility provisions under IRC section 4980(H). However, an applicable large employer that offers an ICHRA to its full-time employees (and their dependents) must contribute a sufficient amount for the offer of the ICHRA to be considered affordable in order to avoid a potential penalty under 4980(H).

ICHRA FORFEITURE RULE

An ICHRA must provide that amounts are either forfeited when an individual cease to maintain individual insurance coverage. Also, employees must be given an annual opportunity prior to the first day of the plan year to waive and opt out of all future reimbursements. Finally, employees who terminate employment must either forfeit any remaining HRA balance or be permitted to waive and opt out of all future reimbursements.

LIMITED EXCEPTED BENEFIT HRA

The rules also allow employers to offer certain limited excepted benefit HRAs ("LEBHRA") to individuals to whom they also offer other traditional group health insurance that is not solely excepted benefits.

To qualify as a LEBHRA, a plan must limit amounts newly made available to $1,800 a year (indexed annually for inflation). The $1,800 limit will not include amounts that are permitted to be carried over from on year to another, but employers must include amounts made available in any other non-limited excepted benefit HRA they offer to the same individual.

A LEBHRA may not reimburse employees for premiums for individual health insurance coverage, group health insurance coverage (other than COBRA) or Medicare Parts A-D. Further, certain small employers with fully insured or partially insured group health plans cannot reimburse for STLDI policies if the U.S. Health and Human Services (HHS) finds that the reimbursement of STLDI premiums by LEBHRAs causes significant harm to the small group market in that employer's state.

An employer must make a LEBHRA available on the same terms to all similarly situated employees, and must provide notice to employees under the rules that apply to summary plan descriptions.

CONCLUSION

Employers will now have more options for providing provide HRAs to various classes of employees for certain limited purposes. In addition to the final regulations, the DOL provided on this topic FAQs, a model notice and a model attestation form. More agency guidance on the particulars surrounding these new HRAs is expected in the future. If you have any questions regarding these new HRA designs, please contact a member of your EPIC team.

EPIC Employee Benefits Compliance Services

For further information on this or any other topics, please contact your EPIC benefits consulting team.