FINDLEY post

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New HRA Rules are a Potential Game-Changer

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Effective January 1, 2020, employers can establish two new Health Reimbursement Accounts (HRAs) — an Individual Coverage HRA (ICHRA) and an Excepted Benefit HRA (EBHRA). This could be a significant development for employers sponsoring employee health benefit plans — both insured and self-funded.

Questions Employers Should Ask

Employers should consider the following questions regarding the impact of the new rules.

- Will the new HRA rules change how your organization delivers health benefits? If so, how?
- Do you believe these new rules will facilitate more job mobility? If so, how will that trend impact your ability to retain talent, or attract new associates?

How Did We Get to this Point?

You may recall that in October 2018, proposed regulations were released by the Departments of Health and Human Services, Labor, and Treasury to enable employers of all sizes to use a Health Reimbursement Arrangement (HRA) to finance individually-purchased health insurance on a tax-preferred basis.

Comments on the proposed regulations were due by December 28, 2018. In June 2019, final regulations were released and generally apply for plan years beginning on or after January 1, 2020.

Individuals can currently purchase health insurance from either the ACA Marketplace (i.e. the public "exchange") or directly from an insurer.

Employers with less than 50 full-time employees can currently reimburse an employee for individual health insurance premiums using a Qualified Small Employer HRA (QSEHRA). In 2019, the amounts an employer can contribute to a QSEHRA are limited to $5,150 for Single coverage or $10,450 for Family coverage.

What Changed?

Effective January 1, 2020, two new HRAs can be established.

Individual Coverage HRA (ICHRA)

As long as the individual purchases ACA-compliant health coverage, the employer (of any size) can reimburse the employee for those premiums subject to these rules:

- Short-term Limited Duration Insurance (STLDI) policies don't qualify as ACA-compliant coverage
- The employer cannot also offer a traditional group health plan in addition to the ICHRA
- Offering an ICHRA will satisfy the ACA employer mandate under Section 4980H so long as a) the affordability threshold is met; and b) the employer makes the ICHRA available to entire classes of employees, such as FTEs, or PTEs. However, there are minimum class sizes:
    - For those employers with less than 100 employees: minimum class of 10 employees
    - For employers with 100-200 employees: the minimum class is 10% of total employees
    - For employers with more than 200 employees: the minimum class is 20 employees
- A notice of the availability of an ICHRA must be provided at least 90 days prior to the beginning of the plan year (a model notice accompanied the final regulations)
- When an employee or their dependent gains access to an ICHRA, a Special Enrollment Period applies
- The amounts contributed to the HRA must not favor highly compensated individuals—there are only two instances in which the employer's HRA contributions can vary: a) older employees may receive higher amounts (but not to exceed a 3:1 age band); or b) employees with greater numbers of covered dependents may receive a higher amount
- There is no limit on the amount the employer can contribute to the ICHRA and

- The amount of the ICHRA reimbursement is not taxable to the employee

Excepted Benefit HRA (EBHRA)

Those employers wishing to continue offering traditional health benefits (including PPOs, HMOs, or qualified high deductible health plan/HSA plans) can offer an EBHRA to pay:

- Out-of-pocket medical expenses
- Dental benefits
- Vision benefits or
- STLDI premiums

Although these reimbursements are also tax-exempt, the amount that can be contributed by the employer is limited to $1,800 per year. This amount will be indexed for inflation after 2020.

An employee could opt-out of his/her employer-sponsored health plan and still be eligible for the EBHRA. However, an employee *cannot* have both an ICHRA and an EBHRA.

Now What?

A defined contribution (DC) approach to employee health benefits is not new. A few years ago, private health insurance exchanges were a hot topic. However, they did not catch on for active employees, primarily because the insured models were inefficient due to state premium taxes, ACA market share fees and broker commissions. In addition, they had an unsatisfactory record in providing long-term rate stability.

The ICHRA promises to be more viable, assuming the individual health insurance market remains healthy. Remember, the ACA still applies to the individual market in that a person can't be denied coverage due to pre-existing condition, or have his/her premiums increased because of health status.

When HIPAA was enacted in 1996, a key objective was to facilitate portability of health insurance and end "job lock". However, that goal was not fulfilled in an employer-sponsored health benefits environment. But with individually-purchased health insurance, portability is achieved. As a result, will employees be more apt to change jobs and either look for employers with ICHRAs or negotiate additional compensation to pay their health insurance premiums? If so, how does this impact an employer's employment value proposition, or their ability to retain qualified talent?

Although the Trump Administration believes these HRA rules will appeal mostly to small-to-medium employers, it is likely larger employers looking for an effective DC approach to health benefits will take a serious look at ICHRAs. Although health care cost trends have moderated somewhat in recent years, they are still accelerating at three times inflation. Any opportunity to budget health benefit expenses on the same basis as wage and salary increases is very important to all businesses.

For more information please use the following link to access the DOL/HHS/Treasury FAQ on New Health Coverage Options for Employers and Employees.

Findley will continue to follow HRA developments. To learn more about how these rules impact your future health care strategy, appropriate employee communications, or suitable HRA administrative arrangements, contact your Findley consultant or Bruce Davis at *bruce.davis@findley.com* or 419. 327.4133.