HRAs 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.

Prior to 2014, the IRS permitted employers to reimburse or otherwise pay for employees' individual health insurance premiums on a tax-free basis. Some employers had hoped to continue this practice under the ACA by dropping employer-sponsored coverage (for some or all employees) and instead subsidizing employee purchases of individual insurance policies in the state health insurance exchanges or the private market, either through a health reimbursement arrangement (HRA) or another type of employer reimbursement arrangement.

However, these stand-alone reimbursement arrangements are prohibited for plan years beginning on or after January 1, 2014, since they violate 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 is an exception for "integrated" HRAs and employer reimbursement arrangements, outlined in more detail in the **Employer Reimbursement Arrangements** chart below.

Further complicating the issue are vendors that promote certain reimbursement arrangements as satisfying ACA requirements. These promoted arrangements go by various names, including "Section 105 reimbursement plans," "Tax-favored payment of individual policies for employees," and "Free individual health insurance subsidies for employees." Regardless of the name, the arrangements generally fall under the standard definition of an HRA: a 100% employer-funded account used to reimburse the medical expenses (including premiums) of employees.

Whatever the arrangement or title, the IRS position is clear: employers may not reimburse or otherwise pay for employees' individual policy premiums on a pre- or post-tax basis. As a result of this position, employers may have questions regarding other benefit plans and arrangements that are designed to help employees meet healthcare premium costs. The **Employer Reimbursement Arrangements** chart summarizes several different types of arrangements, including HRAs, cafeteria plans (specifically, premium-only plans, or POPs) and other employer reimbursement arrangements, and indicates whether they are allowed under the ACA.

Employers that sponsor permissible HRAs, including employers with fully insured medical plans, should note that they are responsible for paying annual fees based on the covered life headcount in connection with the Patient-Centered Outcomes Research Institute (PCORI), which conducts outcomes-based research for clinical effectiveness. For further information about PCOR fees, see the NFP 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 NFP publication **Point Solution Programs: A Guide for Employers**.

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.
HRA used to purchase coverage under a group health plan in a private exchange.	Yes, if integrated.
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.
Stand-alone retiree-only HRA.	Yes. Exempt from ACA.
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 U.S. Department of Labor (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 health savings account 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, excludes value of coverage from employee's gross income.	No. This is considered an HRA and violates ACA.

WHAT IS AN "INTEGRATED" HRA?

Basically, an integrated HRA is one that is connected to and reimburses expenses for a group health plan. To be considered an integrated HRA, there are five requirements that must all 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 1–3 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 the employer 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 relatively new type of 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 ($1,950/year for plan years beginning in 2023; $2,100/year for plan years beginning in 2024). The EBHRA benefit would need to 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.

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 — see requirement 2 above). 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. As described above, 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, which is available for private exchange or SHOP plans, allows employers to limit their financial exposure by providing employees a fixed-premium percentage of the selected plan. Because the plans are considered group coverage, the HRA and Section 125 limitations noted in the chart above do not apply.

MAY EMPLOYERS ESTABLISH A HEALTH FLEXIBLE SPENDING ACCOUNT (FSA) FOR USE IN REIMBURSING PREMIUMS ELSEWHERE?

No. Health FSA funds (whether employer- or employee-funded) may not be used to reimburse an employee for health insurance premiums under the employer's plan or under any other plan. Employers may establish an FSA for reimbursement of employee 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 existence of certain factors but generally requires the employer to have minimal involvement in and endorsement of the plan. To satisfy the safe harbor, the following requirements must be satisfied:

- 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 outside counsel.

SUMMARY

Employers that sponsor, or are considering sponsoring, HRAs and other reimbursement arrangements should be mindful of the compliance considerations related to these benefits, particularly under the ACA and Section 125. To discuss these compliance considerations and other aspects of your employee benefits program, or for copies of NFP publications, contact your NFP benefits consultant. For further information regarding NFP's full range of consulting services, see **NFP.com**.

RESOURCES

IRS Notice 2013-54

DOL Technical Release 2013-03

Federal Register 77632

FAQs about Affordable Care Act Implementation (Part XXII)

IRS Notice 2015-17

IRS FAQs on Employer Health Care Arrangements

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