

New Guidance Creates a New Playing Field for HRAs

Ballard Spahr
LLP

Article By

[Edward I. Leeds](#)

[Ballard Spahr LLP](#)

[Legal Alerts](#)

- [Health Law & Managed Care](#)
- [Labor & Employment](#)
- [Administrative & Regulatory](#)

- [All Federal](#)

Wednesday, October 24, 2018

The U.S. Departments of the Treasury, Labor, and Health and Human Services have jointly issued [proposed regulations](#) that envision a broad landscape for the use of health reimbursement arrangements (HRAs) and certain other account-based plans to fund health benefits. The rules provide the last and, perhaps, the most significant set of guidance generated by an Executive Order published [last October](#).

Final regulations have already been issued on [Association Health Plans](#) and [Short-Term, Limited Duration Insurance](#). Once finalized, this new guidance will take effect for plan years beginning on or after January 1, 2020.

Earlier guidance viewed HRAs through a narrower lens that focused on the need for HRAs to integrate with group health coverage to meet rules under the Affordable Care Act. The new rules provide that HRAs may be integrated with individual health coverage—whether purchased through a Health Insurance Exchange or otherwise—by meeting specified requirements:

- Individuals must document or attest that they have obtained individual health insurance coverage;
- The individual coverage must provide more than just dental, vision, and other excepted benefits;
- For any class of employees, the terms for participating in the HRA must be

uniform. The rules specifically identify the permissible classes, including full-time, part-time, and collectively bargained employees;

- No class of employees may be offered both an HRA that integrates with individual coverage and traditional health coverage;
- Notice describing certain features and ramifications of the HRA arrangement needs to be provided; and
- Individuals must be allowed to opt out of the HRA. By opting out, they may receive subsidies for coverage in a Health Insurance Exchange.

The regulations also allow certain stand-alone HRAs to be treated as excepted benefits. Excepted benefits are exempt from various Affordable Care Act and other legal requirements. For an HRA to qualify for excepted status, an employer must also offer group health coverage, but cannot require any employee to enroll in the group coverage to be eligible for the HRA.

Contributions to excepted HRAs are limited to \$1,800 per year for any employee. Excepted HRAs must be offered on the same terms to similarly situated individuals and may not be integrated with individual health insurance coverage. An excepted HRA may, however, reimburse the cost of short-term, limited duration coverage.

The rules address a number of related topics, such as the availability of premium subsidies in the health insurance exchange, the use of HRAs to meet employer mandate requirements, the exemption of individual health insurance from ERISA's requirements, and the use of "cafeteria plans" to pay for individual insurance premiums beyond those covered by an HRA.

The government projects that the new guidance will significantly expand the use of HRAs. Small employers, in particular, may make widespread use of HRAs once the new rules take effect. Many of the rules are aimed at creating an environment that will further stabilization of the individual insurance market by bringing in a broad segment of employed individuals. The regulations solicit comments on the subject of stabilization and a range of other topics in a comment period that will run for 60 days after the rules are published in the Federal Register.

Copyright © by Ballard Spahr LLP

Source URL: <https://www.natlawreview.com/article/new-guidance-creates-new-playing-field-hras>