

Coming to Market: Final Rules for Individual Coverage HRAs

Thursday, June 20, 2019

The U.S. Departments of the Treasury, Labor, and Health and Human Services have issued [final regulations](#) allowing employers to establish health reimbursement arrangements and certain other types of reimbursement plans (collectively, “individual coverage HRAs”) that integrate with individual health insurance coverage. Individual coverage HRAs (ICHRAs) present an alternative to traditional group health coverage and allow employers to pay or reimburse—directly or through an account—some or all of the premium for an employee’s individual health insurance coverage. Effective for plan years that begin in 2020, the regulations define a path for employers to establish a group health plan that presents a fixed-cost alternative to traditional group health coverage. The Departments contemporaneously issued a related [press release](#) and [set of FAQs](#) that, more briefly, provide information on the requirements that apply to ICHRAs.

The final rule sets forth specific standards that ICHRAs need to meet to comply with Affordable Care Act (ACA) rules and other applicable laws. These standards retain many of the criteria included in the [proposed regulations](#) issued last fall. For example: the final rule requires that participants in an ICHRA actually obtain, and substantiate that they have obtained, individual health insurance. The final rule also identifies specific classes of employees. If an employer seeks to offer employees in a particular class an ICHRA, it must do so for all employees in that class on the same terms and conditions, and it may not offer those employees an option to elect traditional group health coverage. Employers may establish a cafeteria plan arrangement to allow employees to use pre-tax dollars to pay the cost of premiums for individual coverage not covered by the ICHRA.

However, the final rule makes a number of significant revisions and clarifications to ICHRA requirements, including:

- **Classes.** Although the final rule retains seven of the eight classes of employees permitted under the proposed regulations (classes such as full-time employees, part-time employees, and employees covered by a particular collective bargaining agreement), it eliminates the class of employees below age 25. In its place, the final rule adds new classes that allow employers to distinguish between salaried and hourly employees and between certain temporary employees engaged through a staffing agency and more regular employees. The final rule continues to allow the combination of classes to create a subclass—for example, a class of full-time, collectively bargained employees. It permits employers to create a subclass of employees hired after a particular date. In certain situations, the final rule imposes minimum size requirements on a class.
- **Exceptions to Class Uniformity.** As in the proposed rule, employers may contribute more for employees based on the number of their dependents or on their age, but it limits the maximum differential for contributions between older and younger employees to a 3:1 ratio. Employers may determine which employees will continue to qualify under the terms of ICHRA after their employment ends, but in general, must treat the eligible former employees like the active employees in their (former) class.
- **HSA Compatibility.** Employers may offer employees the option of enrolling in an ICHRA that is compatible with enrollment in a high deductible health plan with a health savings account as long as the option is offered on the same terms and conditions to everyone in the class.

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- **Opt-out.** Employees must automatically be allowed to opt-out of an ICHRA once each year, generally in advance of each plan year, and on termination of employment.
- **Substantiation.** The requirement that employers substantiate that participants have individual coverage must usually be met before the year begins. This requirement may be met through an attestation by an employee. A [model attestation](#) is included in separate guidance.
- **Notice.** Employers must provide employees with a notice that describes the ICHRA and addresses certain related matters, such as individual health insurance and the availability of the premium tax credit for individual coverage obtained through a Health Insurance Exchange. Generally, the notice must be provided 90 days in advance of the start of the year. The final rule includes special rules for situations where that timing is not reasonable (as with mid-year hires). A [model notice](#) is included in separated guidance.
- **Medicare.** In accordance with the same basic rules that apply to integration with individual health insurance, an ICHRA may integrate with Medicare (either Parts A and B or Part C). It may reimburse premiums for Medicare, including Part D, and for Medicare supplemental coverage.

The final rule addresses a number of other relevant subjects, such as:

- When HRAs qualify as excepted benefits (these excepted benefit HRAs are distinct from individual coverage HRAs).
- When individual health insurance coverage purchased through an ICHRA will not be subject to ERISA.
- When Special Enrollment Periods, which allow employees who enroll in an ICHRA to purchase individual coverage through a state health insurance exchange, will apply.

Guidance on certain additional subjects is expected.

Some of the complexity of the new regulations arises from its effort to bridge requirements that apply to group health plans (an ICHRA is, itself, a group health plan) with the market for individual health insurance. In drafting the proposed and final rules, the Departments repeatedly weighed the effect that provisions will have on the stability of the individual health insurance market. For example, the prohibition against offering employees a choice between traditional group health coverage and an ICHRA specifically aims to prevent employers from taking measures that would, by design or otherwise, move a disproportionate number of high risk employees into the individual market. Although this concern was hardly the sole objective of the final rule, much of the success or failure of the new regulations will be measured by the long-term effect they have on the growth and stability of the individual health insurance market, as well as what they mean for the provision of group health coverage.

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