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Guidance on Annual Limit Waivers for HRAs

Recently released guidance provides for a blanket exemption from healthcare reform's restrictions on annual dollar limits until 2014 for health reimbursement arrangements (HRAs) that were set up before September 23, 2010. The new guidance eliminates the need for stand-alone HRAs that aren't integrated with other health coverage or limited to retirees to seek annual-limit waivers. Integrated and retiree-only HRAs are already exempt. Employers with HRAs should note that they are otherwise still subject to the notice and reporting duties.

Healthcare reform annual/lifetime limit rules
Under healthcare reform, plans are generally prohibited from imposing lifetime or annual limits on the dollar value of essential health, but “restricted annual limits” are allowed with respect to essential health benefits for plan years beginning before January 1, 2014. For plan years beginning on or after January 1, 2014, no annual limits on essential health benefits are permitted.

The annual limit rules apply differently to certain account-based plans, and do not apply at all to health flexible spending arrangements, medical savings accounts, or health savings accounts. The rule for HRAs varies depending on the type of arrangement. HRAs that are integrated with other coverage (as part of a larger group health plan) are not subject to the annual limit restrictions, so long as the other coverage complies with lifetime and annual limit requirements. Retiree-only HRAs are also not subject to annual limits.

Waiver option for some plans
In some cases, restricted annual limits may be waived if compliance with the rules would result in a significant decrease in access to benefits or a significant increase in premiums. Guidance was issued in 2010 (and further revised in 2011) to establish a temporary waiver program and describe the process for a group health plan to apply for a waiver or a waiver extension from the restriction on annual limits on the dollar value of essential health benefits. For more on the waiver requirements, refer to the “Technical Instructions for the Waiver Extension and Waiver Application Process.” The waiver process is intended to ensure that individuals with certain coverage (including coverage under “mini-med” plans) would not be denied access to needed services or experience more than a minimal impact on premiums. Only mini-med or limited benefit plans already in place prior to September 23, 2010 may apply for waivers of the annual limit requirement. No new plans may apply for waivers. From a policy perspective, HHS is seeking to limit the sale of new limited benefit plans from this point to 2014, when limited benefit plans will effectively be eliminated by the healthcare reform law.

General information about MERPs and HRAs

Medical expense reimbursement plans (also known as MERPs, MRPs, Section 105 plans, or direct reimbursement plans) are arrangements through which employers reimburse employees for uninsured medical expenses that fall within the Code definition of “medical care” — expenses that are not paid for by the employer's major medical plan. These plans can receive favorable tax treatment (meaning that the reimbursements are tax-free to employees and tax-deductible for employers), provided that they do not discriminate in favor of highly compensated employees. MERPs have been used by employers for years, but after IRS guidance issued in 2002 coined the term “health reimbursement arrangement (HRA)” to describe a certain type of MERP that included carryover and spend-down features, many employers have turned their MERPs into HRAs.

An HRA is an employer-funded mechanism through which employees can be reimbursed for their eligible medical expenses that are not reimbursed elsewhere (i.e., a type of MERP). Employers typically create notional (i.e., unfunded) HRA accounts for each participating employee and then reimburse the employee for any substantiated medical expenses up to his or her account balance. Employees are not allowed to contribute directly or indirectly to an HRA. An HRA may permit any unused balance remaining in an employee's HRA account at the end of the year to be carried over and used toward the next year's eligible medical expenses. In addition, depending on an employer's plan design, former employees may be allowed to “spend down” any balance remaining in their HRA accounts on the date they terminate employment. Some employers use spend-down features to provide employer funding of retiree medical benefits. Some HRAs are offered as stand-alone arrangements (which means that they are not tied to a particular health insurance plan), and some are offered as “integrated” arrangements (which means that they are bundled with a health insurance plan, often a high-deductible plan, and the HRA is used to pay medical expenses that are below the deductible or that are or that are not covered by the health plan).

HRAs/MERPs are group health plans and that they are subject to the full range of Code requirements that apply to group health plans (e.g., COBRA, claim substantiation), which would include the healthcare reform mandates. In addition, HRAs/MERPs are clearly employer-sponsored plans providing medical care and are therefore ERISA group health plans (when sponsored by private-sector employers) or Public Health Service Act group health plans (when sponsored by state or local governmental employers).

Application of limit rules to HRAs/MERPs

The limit rules under healthcare reform raised questions concerning the continuing viability of some HRA/MERP designs (most notably, stand-alone plans). Employers generally cap the amount of HRA reimbursements on an annual basis, so HRAs by their very nature impose annual limits on the dollar value of benefits. (The annual limits for each year of coverage could be said to cumulatively create lifetime limits as well.) Guidance clarified that the annual limit restriction does not apply to HRAs that are integrated with a group health plan that meet the requirements under healthcare reform or to stand-alone retiree-only HRAs. The agencies requested comments as to whether the annual and lifetime limits rule should apply to stand-alone non-retiree HRAs (if the rule was determined to apply, then presumably employers would no longer be able to offer HRAs). Therefore, plan sponsors and insurers have been eagerly awaiting the final word on whether stand-alone HRAs that are not retiree-only plans or excepted benefits remain viable.

The impact of the new guidance

The guidance specifically exempts, as a class, all HRAs (in effect prior to September 23, 2010) that are subject to annual dollar limits on essential health benefits from having to apply for annual

limit waivers. Employers offering HRAs should note the following:

- New and existing HRAs that are integrated with other coverage (as part of a larger group health plan) are not subject to the annual limit restrictions, so long as the other coverage complies with lifetime and annual limit requirements.
- New and existing retiree-only HRAs are also not subject to the annual limit rules.
- New stand-alone non-retiree HRAs are not permitted to be set up in any event after September 23, 2010.
- Existing stand-alone non-retiree HRAs that were in effect before September 23, 2010 do not have to seek annual-limit waivers, but an HRA that is exempt from applying for an annual limit waiver must still comply with the record retention and annual notice requirements to participants. Previously issued guidance explains that certain health plans must tell consumers if their health care coverage is subject to an annual dollar limit lower than what is required under the law.
- If an employer that maintains an HRA also maintains other coverage, whether or not that coverage is integrated with the HRA, that other coverage must still meet the annual limit or obtain a waiver. All waiver and waiver extension applications must be received by September 22, 2011.

Employers are advised to continue to monitor health reform developments. As new information is issued on health reform, Conner Strong & Buckelew will issue alerts and updates. Should you have any questions, please contact your Conner Strong & Buckelew representative toll-free at 1-877-861-3220.