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New Guidance Requires Action by Employers for their HRA Plans

The US Treasury Department and the Department of Labor (DOL) recently issued guidance concerning how the Patient Protection & Affordable Care Act (PPACA) affects health reimbursement arrangements (HRAs). Previous guidance stated that an HRA must be linked to other group health plan coverage in order to continue to offer benefits in 2014. The only exception to this rule is a retiree-only plan because these plans are not subject to the PPACA's group health plan mandates.

Background on HRAs

Medical reimbursement accounts (known as HRAs) are a popular group health plan design feature that provides employees with a spending account to reimburse them for qualified medical expenses. HRA contributions must be made exclusively by the employer or other plan sponsor – no employee contributions are permitted. Distributions from the HRA are tax-free. Balances remaining in the HRA at the end of a coverage period may be carried forward if the plan documents permit. HRAs are generally considered group health plans and thus are subject to the mandates that are applicable to these plans. Two of the PPACA mandates – the prohibition against annual dollar limitations on essential health benefits and the requirement that non-grandfathered health plans provide preventive benefits with no cost sharing – are discussed in the HRA guidance.

Overview of the New HRA Guidance

The HRA guidance is best understood by reviewing the stated rationale behind the government's position. Effective with the plan year beginning on or after January 1, 2014, a standalone HRA (i.e., an HRA account that pays for benefits regardless of whether an individual is enrolled in a group health plan) that is not a retiree-only plan will violate the annual dollar limit prohibition and will therefore not be permitted. The standalone HRA has a per se dollar maximum on essential health benefits, which the government states violates the PPACA. Such a standalone HRA would also violate the preventive services requirement, because it would not pay for all required preventive services without cost sharing.

New Criteria for HRAs

The new rules governing HRAs that are not retiree-only HRAs are the following:

- The HRA must be offered only to employees who are actually enrolled in other group health plan coverage. Pairing the HRA with individual insurance coverage would violate the annual dollar limit prohibition and the preventive services requirement.

- The other group coverage must comply with the annual dollar limit prohibition and, if non-grandfathered, the preventive services requirements.
- The other group health plan does not have to have the same plan sponsor, the same plan document or the same Form 5500 filing as the HRA. For example, the HRA could be made available to employees who enroll in the group health plan offered by a spouse's employer.
- If the other group health plan with which the HRA is paired does not meet the PPACA's 60% minimum value standard, there will be limits on the types of expenses that the HRA may reimburse. In that circumstance, the HRA may only reimburse for copayments, coinsurance, deductibles, expenses that are not essential health benefits, and premiums for the purchase of the other group health plan.
- An employee or former employee must be allowed, at least annually, to permanently opt out of HRA coverage and waive future reimbursement from the HRA. Upon termination of employment, an employee must be able to permanently opt out of and waive future reimbursements from the HRA, or if this option is not made available in the plan documents, the remaining amounts in the employee's HRA must be forfeited. The reason for the opt-out is to give the employee the choice of spending down the HRA balance (in accordance with the terms of the plan) or applying for a premium assistance tax credit in the health insurance Marketplace. Retaining any balance in the HRA would mean the employee could not get the tax credit.
- If not waived, unused HRA amounts that are credited to a permissible HRA may be used to reimburse qualified medical expenses after the employee ceases to be covered by the other group health plan coverage (for example, when the employee retires).

Exception for Retiree-Only HRAs

Employers may continue to offer retiree-only HRAs that do not have to comply with the new rules described above. In other words, retiree-only HRAs may continue to operate on a standalone basis as they do now. Because they do not have to be paired with other group coverage, these HRAs may reimburse for the purchase of an individual health insurance policy through the Marketplace or the individual market outside of the Marketplace. However, a retiree with any money in a retiree-only HRA would not be able to receive a premium assistance tax credit for coverage purchased through a Marketplace. If any funds remain in the account, even after the employer ceases to contribute, the retiree would not be eligible for the federal premium subsidies for that month. As a result, plan sponsors offering retiree only HRAs may wish to give retirees the choice to permanently opt out of HRA coverage and waive future reimbursements so that the retiree could gain eligibility for a subsidy in a Marketplace plan. The guidance does not describe what arrangements qualify as a retiree-only HRA. Employers will need to work with legal counsel to determine whether an HRA offered to retirees qualifies as a retiree-only HRA.

Action Steps

The new rules for HRAs (other than retiree-only HRAs) take effect with the plan year beginning on or after January 1, 2014. For plans operating on a calendar year basis, plan sponsors need to take the following steps immediately:

- Revise plan documents, reimbursement policies and procedures, and HRA claims forms to reflect the new rules.
- Establish procedures under which an employee provides documentation of other group health plan coverage, if the HRA reimburses expenses for individuals covered outside of the plan sponsor's group health plan. A process could include requiring a copy of the other group health plan's summary of benefits and coverage, which must state whether the plan

meets the minimum value standard. A copy of the individual's enrollment card in that other group plan should also be required.

- If the plan permits employees to spend down accrued balances after termination of employment, provide an opt-out procedure so that employees can decline HRA coverage and apply for premium assistance tax credits if they purchase Marketplace coverage. (Employers offering retiree-only HRAs may wish to do the same.)

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