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Health Reimbursement Account Proposed Rule

OVERVIEW

On October 23rd, the Department of Health and Human Services, Department of Labor, Department of the Treasury, Employee Benefits Security Administration and the Internal Revenue Service released a proposed rule to expand the use of Health Reimbursement Accounts (HRAs). The rule will allow employers to fund HRAs to make tax-preferred contributions toward employee and dependent purchase of individual-market insurance. The 21st Century CURES Act allowed some small business employees to use HRA contributions for insurance premiums, but HRAs have otherwise been limited to the reimbursement of out-of-pocket medical expenses for those insured by employer-sponsored group plans.

This change would make it easier for employers to take a defined-contribution approach to their health benefits and would make it possible to satisfy the Affordable Care Act (ACA) employer mandate for health insurance benefits without procuring group health insurance.

If finalized, the regulation would go into effect for plan years beginning in January 2020. The Agencies estimate that by 2028, 10.7 million individuals would have an HRA integrated with individual health insurance coverage, while the number of individuals in traditional group health plan coverage would decrease by 6.8 million, or 4.5%.

HHS will accept comments on the proposed rule until December 28th. This document summarizes key provisions of the rule, the full text of which is available here.

Integration with Individual Market Plans

Under the proposed rule, an HRA that pays premiums may qualify as meeting the ACA employer mandate for health coverage only if it is designed to be integrated with individual health insurance that covers minimal essential health benefits. Such a Premium-Directed HRA can also be used to fund out-of-pocket costs for the insurance coverage, such as copays and deductibles. However, the Premium-Directed HRA cannot reimburse for medical expenses if the employee ceases to be covered by individual health insurance coverage and funds must be forfeited. The offering of a Premium-Directed HRA would trigger eligibility for a special enrollment period in the individual market outside the open enrollment period, unless the employee already has individual market coverage.

An employer providing a Premium-Directed HRA must adopt procedures to verify enrollment in individual coverage before distributing HRA funds, and must give notice to employees at least 90 days before the beginning of the plan year describing the conditions for the use of HRA funds, and for receiving premium tax credits/subsidies in the individual market exchanges. However, an employer cannot require or endorse the selection of a particular insurance product or insurer by employees.

A Premium-Directed HRA may not be used to purchase excepted benefits, such as separate vision, dental or long term care coverage. The proposed rule also would not allow Premium-Directed HRAs to purchase short-term limited duration insurance (STLDI), though comments are solicited on whether to include STLDI.

Use of Individual Market Premium Tax Credits

Employees offered a Premium-Directed HRA for the purchase of individual market insurance may decide to opt out of receiving the account. In such cases, the individual may decide to instead purchase insurance in the ACA individual marketplace using Advanced Premium Tax Credit (APTC) and Cost-Sharing Reduction subsidies, if applicable based on income.

Employees who opt-out and receive subsidies in the individual marketplace may not also use the employer's cafeteria plan to assist in the pre-tax purchase of insurance, though employees who do not receive subsidized individual market insurance may do so. A cafeteria plan, such as a Flexible Spending Arrangement (FSA) or Premium-only-Plan, is a reimbursement plan offered by an employer in which employees elect to contribute their pre-tax income to an account that may then be used to pay for qualified health care expenses.

Because employer-sponsored group insurance is deducted from corporate tax liabilities, the Agencies estimate no net effect from individuals switching from employer-sponsored coverage (including Premium-Directed HRAs) to federally subsidized coverage in the individual marketplace.

ACA Market and Consumer Protections

The proposed rule includes several consumer protections and market stability measures. An employer would be prohibited from offering both a Premium-Directed HRA and a traditional group health plan to the same class of employees, and must make the Premium-Directed HRA available to entire classes of workers. HRAs offered to a class of employees may not change in size based on health factors, though HRA funding may increase based on employee age and the number of dependents within a class of employees.

The designated classes include, but are not limited to:

- Full-time;
- Part-time;
- Collectively bargained employees;
- Under age 25; and
- Employees whose primary work location is in the same rating area.

Salaried and hourly employees are not considered separate classes for purposes of the proposed rule. An employer may treat the combination of classes as a class for purposes of offering uniform benefits. For example, an employer may offer a Premium-Directed HRA to all employees who do not fall under a collective bargaining agreement and who work out of one office (if no other employees have their principal worksite in the same rating area), but offer group health insurance to all other employees.

The Agencies solicit comments on whether employers should be able to offer employees a choice between a traditional group health plan or a Premium-Directed HRA.

Conformity with ACA and ERISA Employer Requirements

The rule would also allow employees to opt-out of the HRA. Employees who opt-out would be eligible to receive subsidies for coverage, at certain income levels, in the Health Insurance Marketplace without penalty to the employer if the offered HRA contribution meets affordability requirements for employer-sponsored insurance coverage.

A Premium-Directed HRA is considered the provision of affordable coverage if the employee's required monthly contribution needed to purchase the lowest cost available Silver plan on the individual market, less the HRA monthly contribution, complies with ACA requirements based on income level. This would be a change from previous individual market affordability requirements which benchmarked the second-lowest cost Silver plan, and would apply whether or not the individual chooses to receive the Premium-Directed HRA.

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The Premium-Directed HRA would be subject to ERISA compliance rules, but any individual insurance purchased with the HRA would not be, relieving employers of the burden of describing each policy purchased or providing carrier information.

Excepted Benefit HRAs

The rule would also allow employers that offer employment-based coverage to provide non-integrated excepted-benefit HRAs of up to $1,800 per year for certain medical expenses that do not constitute minimum essential coverage, such as non-integrated vision, dental and long term care expenses. An employer may offer an excepted-benefit HRA or a Premium-Directed HRA, but not both, to a class of employees.

Unlike FSAs, which may also be used for such expenses, excepted-benefit HRAs would be funded solely by the employer and unspent funds could be rolled over from year to year.