

BENEFITS BULLETIN

June 20, 2019

Departments Release Final Rules Expanding Availability of HRAs

On June 13, 2019, the Departments of Labor, Health and Human Services, and the Treasury (the Departments) released final rules that significantly expand the availability and versatility of health reimbursement arrangements (HRAs) for employers. This final rule is the product of a 2017 executive order in which President Trump directed the Departments to explore ways to increase access to HRAs – particularly in combination with individual health insurance.

Existing guidance requires that HRAs be integrated with group health coverage and prohibits the reimbursement of individual health insurance premiums. The final rules, effective January 1, 2020, offer solutions to these restrictions in the form of two new HRAs: Individual Coverage HRAs and Excepted Benefit HRAs. The tax treatment of these new HRAs remains unchanged.

Individual Coverage HRA

The final rules offer the Individual Coverage HRA as a meaningful alternative to traditional group health coverage. Under this arrangement, employees can be reimbursed for the premium cost of individual health insurance (in addition to other medical care expenses). This arrangement allows employees to shop for and procure individual insurance policies while receiving employer-funded tax free dollars to pay for some or all of the cost. And unlike the Qualified Small Employer HRA, the Individual Coverage HRA is available to employers of all sizes and without limitation on the annual contribution amount. However, there are other important conditions that must be satisfied.

Individual Health Insurance

All participants and any dependents must be enrolled in individual health insurance, or Medicare, in order to participate in the HRA. The individual coverage can be *purchased on or off an Exchange but employees who participate in the Individual Coverage HRA are ineligible to receive premium tax credits for Exchange-based coverage.*

Employers must also implement procedures to substantiate that participants and dependents are enrolled in individual coverage. This substantiation must occur both upon initial annual enrollment and prior to each reimbursement made by the HRA.

Uniform Offering

An employer must offer the HRA on the **same terms to all individuals within a single class of employees**, though the amounts offered may vary based on employee age and number of dependents. The rules provide eleven permissible employee classifications upon which employers may make distinctions, including full-time and part-time status, geographic region, seasonality, and temporary employment. All eligible employees must be provided the opportunity to opt out of coverage at least once per plan year, such as at open enrollment.



Traditional Group Health Coverage

Employers cannot offer traditional group health plan coverage to any class of employees to whom it offers the Individual Coverage HRA. An employer can choose to offer the HRA to certain classes of employees and offer traditional group health coverage – or no coverage to other classes, but **no employee can receive an offer of both.**



Notice Requirement

A written notice must be provided to eligible employees at least **90 days prior to the beginning of each plan year**. The notice must include information regarding the terms of the HRA, the employee's right to opt-out of coverage, a description of how the HRA interacts with the premium tax credit, and special enrollment periods that may be available on an Exchange. The Departments make available a [model notice](#) employers can use to satisfy this requirement.



Subject to the foregoing conditions, Applicable Large Employers can offer an Individual Coverage HRA to satisfy the offer of coverage requirement under the employer shared responsibility provisions of the Affordable Care Act. However, the HRA must be considered affordable in order for the employer to avoid liability for penalties. Therefore, employers must contribute a sufficient amount for the offer of the Individual Coverage HRA to be deemed affordable and fully satisfy the employer mandate.

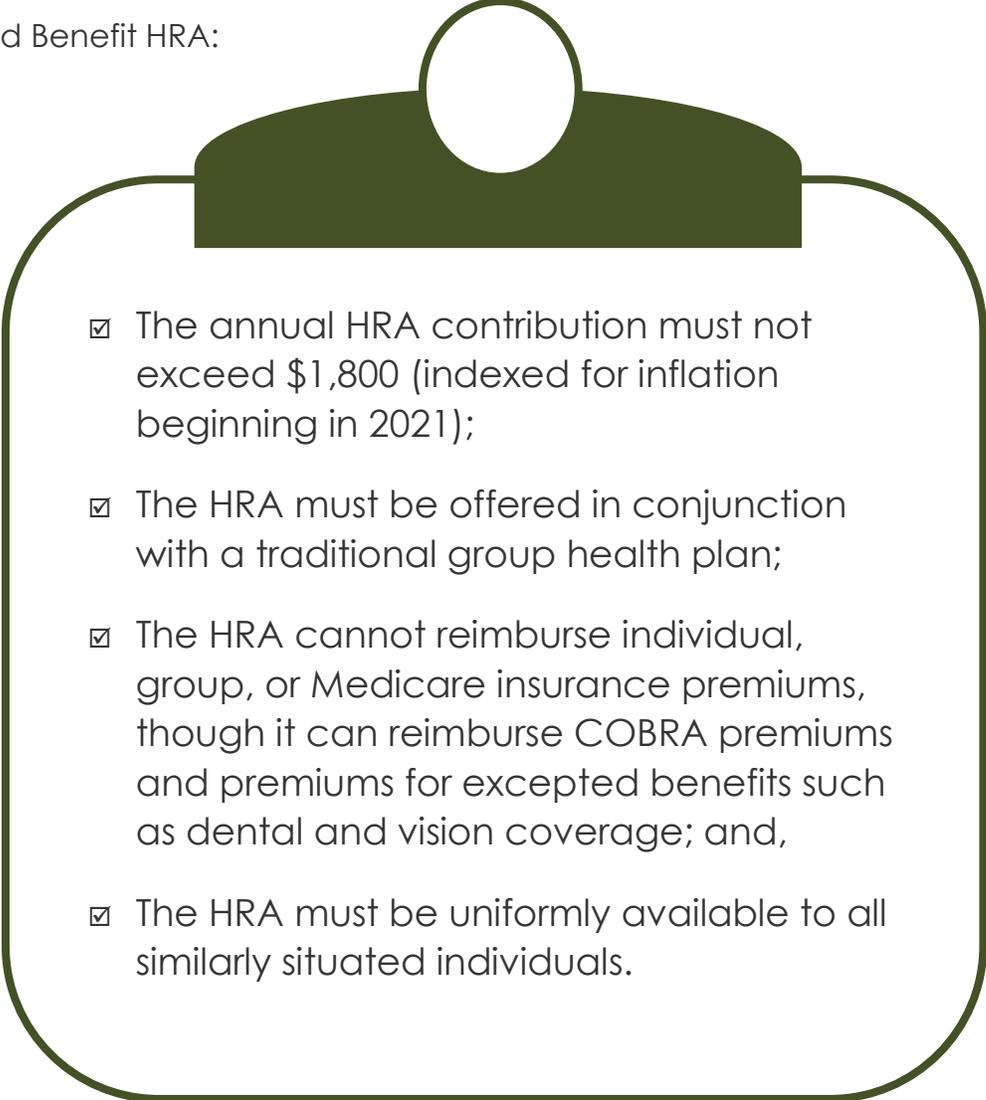
The Internal Revenue Service will issue more information regarding how the employer mandate applies to these HRAs, including how to appropriately determine the affordability of coverage.

Excepted Benefit HRA

A second arrangement made available by the final rules is the Excepted Benefit HRA. This HRA qualifies as an excepted benefit, which means that the arrangement is exempt from many federal health care requirements that otherwise limit the ways in which HRAs and other account-based plans can be designed.

Group health coverage must be offered by the employer in order to also offer an Excepted Benefit HRA. Importantly, though, employees do not need to enroll in the employer-sponsored coverage (or in any other health insurance) in order to participate in the HRA. This is a significant departure from existing regulation that requires traditional HRAs to be integrated with group health plan coverage.

To qualify as an Excepted Benefit HRA:

- 
- 
- ☑ The annual HRA contribution must not exceed \$1,800 (indexed for inflation beginning in 2021);
 - ☑ The HRA must be offered in conjunction with a traditional group health plan;
 - ☑ The HRA cannot reimburse individual, group, or Medicare insurance premiums, though it can reimburse COBRA premiums and premiums for excepted benefits such as dental and vision coverage; and,
 - ☑ The HRA must be uniformly available to all similarly situated individuals.

Takeaways for Employers

While the final rules make the new HRAs widely available to all employers, some employers may stand to benefit more than others will. **Small employers, employers with a geographically disparate workforce, and those with a large seasonal employee population may find the Individual Coverage HRA to be particularly appealing.** The Excepted Benefit HRA may be advantageous for employers that already offer health coverage to employees but experience significant numbers of voluntary coverage waivers for reasons related to high cost.

Finally, employers may view these HRAs as a less administratively burdensome (and therefore more appealing) option than traditional employer-sponsored insurance plans. However, both arrangements constitute group health plans subject to ERISA and other federal benefits laws, including COBRA, HIPAA Privacy and Security rules, Medicare Secondary Payer rules, and the nondiscrimination rules under the Internal Revenue Code. As a result, employers must be prepared to not only satisfy the specific qualifications associated with each new HRA, but also the myriad of federal (and state) benefits laws that will more broadly apply.

