



## Commonwealth Benefits Group

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HEALTHCARE REFORM UPDATE 2013-29



### What Employers Need to Know Right Now About Health Care Reform

## New Guidance on HRAs and Premium Reimbursement Arrangements

On Sept. 13, 2013, the IRS issued [Notice 2013-54](#), which includes details on permissible health reimbursement arrangements (HRAs), provides some clarification on minimum essential, minimum value and affordable coverage, and addresses payment of individual premiums through an employer-provided plan.

### HRAs

Most people had expected that standalone HRAs would have difficulty meeting PPACA's prohibition on dollar limits, and the Notice confirms this. Beginning with the 2014 plan year, an HRA will not be permitted unless:

- It is integrated with a group medical plan that does not have dollar limits and that provides first-dollar benefits for preventive care,\* or
- The HRA only provides "excepted benefits" such as standalone dental or vision, or
- The HRA only covers retirees.

In order for an HRA to be integrated:

- The HRA must only be available to employees who are actually enrolled in group medical coverage (either through the employee's or a family member's employer); and
- The employee receiving the HRA must actually be enrolled in a group medical plan (either through the employee's or a family member's employer); and
- The HRA must be written to give the employee the opportunity at least annually to permanently decline participation in the HRA,

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and when employment terminates the employee must be allowed to permanently decline participation in the HRA or the balance must automatically be forfeited at termination.

An integrated HRA will be able to reimburse a former employee with unused HRA dollars even after the employee's group medical coverage ends. The IRS will consider an HRA to be minimum essential coverage for as long as it has a balance. A person is ineligible for a premium subsidy if he is covered by an employer-sponsored plan that provides minimum essential coverage. Therefore, an employee will need to be given the opportunity to decline the HRA so that he can apply for a premium subsidy if he prefers. This means that most HRA plan documents will need to be amended to provide the opportunity to decline coverage.

If an employer chooses to make HRA contributions to employees covered under a group health plan provided by another entity, it may simply get a certification of other coverage from the employee. The employer does not need to independently verify that the other coverage meets the PPACA requirements.

Stand-alone medical HRAs will not be allowed after this year for non-retirees because they fail to meet the PPACA requirement that there be no annual or lifetime dollar limit on essential health benefits; HRAs are limited to the amount of the employer contribution, which is virtually always capped. Despite the new restrictions, unused amounts that were credited to an HRA before Jan. 1, 2014, generally may be paid out as reimbursements even after 2013 from a HRA that is not integrated.

### **Minimum Essential Coverage**

As mentioned above, the IRS considers an HRA with any type of a balance to be minimum essential coverage. As a reminder, whether a person has minimum essential coverage matters several ways under PPACA:

- A person with minimum essential coverage does not have to pay an individual shared responsibility/individual mandate penalty.
- A person with minimum essential coverage is not eligible for a premium subsidy through the health marketplace/exchange.
- Beginning in 2015, a large employer (one with 50 or more full-time or full-time equivalent employees) must offer minimum essential coverage to at least 95 percent of its employees or pay a penalty of \$2,000 per year per full-time employee.

### **Impact on Minimum Value and Affordability**

As the IRS has said before regarding HRA contributions used in connection with the employer's own integrated group medical plan:

- If the HRA may only be used for cost-sharing (reimbursing the deductible, copays, and/or coinsurance), current year HRA contributions may be used when calculating the plan's minimum value.
- If the HRA may be used to reimburse premiums, or to pay both premiums and cost-sharing, current year HRA contributions may be used when deciding if the group medical plan is affordable.

The new Notice states that although an employer may consider an HRA integrated with coverage under any group medical plan, contributions to one employer's HRA may not be applied by another employer when deciding if that employer's coverage is affordable or minimum value.

Example: Acme, Inc. sponsors a group medical plan and an HRA for its

employees. Acme's HRA is available only to employees who are either enrolled in its group health plan or in a group medical plan through a family member. Mark is employed by Acme. He chooses to enroll in his wife's group medical plan sponsored by Baker Co. Mark attests to Acme that he is covered by the Baker group medical plan through his wife.

Acme's HRA is permissibly integrated with Baker's group medical coverage for purposes of the annual dollar limit prohibition and the preventive services requirements. Because Acme makes an HRA contribution whether Mark enrolls in the Acme plan or his spouse's plan, Acme may use the HRA contributions when determining whether its group medical plan is affordable or provides minimum value coverage. If, however, Acme only contributed to an HRA if the employee declined Acme's medical coverage and enrolled elsewhere, Acme would not be allowed to use the HRA contribution in its minimum value or affordability determination. Baker may never use Acme's HRA contribution when determining if its plan is affordable and minimum value.

### **Premium Reimbursement Arrangements**

Premium reimbursement arrangements are now called "employer payment plans." An employer payment plan is any arrangement under which an employer reimburses an employee for all or part of the premium for an individual health policy. Employer payment plans include direct employer payment to the insurance carrier and reimbursement of substantiated employee premium payments. Like stand-alone HRAs, employer payment plans will not meet the PPACA requirements of no dollar limits or coverage of preventive care, and so will not be allowed after this year.

The Notice states that an employer payment plan does not include "an employer-sponsored arrangement under which an employee may choose either cash or an after-tax amount [emphasis added] to be applied toward health coverage." This would seem to mean that paying pre-tax premiums through a Section 125 plan for individual coverage would be considered an employer-payment plan and will not be allowed after this year.

### **Action Steps**

Employers that sponsor HRAs will need to determine if the HRA is properly integrated with a group medical plan. If the HRA is integrated, the HRA plan document likely will need to be amended to allow employees to decline to participate annually and to either automatically forfeit unused contributions or allow the employee to decline further participation when employment terminates. Employers with HRAs that are not integrated will either need to discontinue contributions after the 2013 plan year or restructure the arrangement.

Employers that reimburse individual policies likely will need to discontinue that practice after 2013. Plan amendments may be needed if premiums are paid through a Section 125 plan or an HRA.

Retiree-only HRAs will still be permitted, and individual premiums may be reimbursed in this situation. Employers need to consider the effect of the HRA on the retiree's eligibility for a premium subsidy, and amend the plan accordingly.

Note that this Notice only addresses payment of premiums for individual coverage. Premiums may still be paid on a pre-tax basis if coverage is provided through a group policy.

\* Grandfathered plans are not required to provide first dollar coverage for preventive care.

10/8/2013