

American Benefits Council

BENEFITS BRIEFING WEBINAR

Proposed HRA Rules

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Overview of the Proposed Regulations

- Last outstanding item from the Executive Order
 - AHPs
 - STLDI
 - HRAs

Overview of the Proposed Regulations

- Two new types of HRAs:
 - Integrated with individual market insurance (“ICHRA”)
 - Excepted benefit (“EBHRA”)

HRA History

- Health Reimbursement Arrangements
 - Pre-2013 World
 - 2013 and Beyond
 - New Proposed Regulations



Changing Permissibility of HRA Offerings

HRAs – Pre-ACA

- Constituted a group health plan for purposes of IRC, ERISA, PHSA
- Could reimburse any IRC section 213(d) expense for “medical care”, including:
 - Group major medical premiums
 - Individual major medical insurance premiums
 - Premiums for HIPAA-excepted benefits (group or individual)
 - OOP or unreimbursed medical costs

HRAs – ACA per Notice 3012-54

- HRAs continue to constitute GHPs
- ACA imposes “market reforms” – notably, first-dollar preventive care and no annual limits on “essential health benefits” on GHPs
 - Note: But retiree-only and HIPAA-excepted benefits are NOT subject to these market reforms
- Because these market reforms apply to HRAs as GHPs, Obama Administration rules state that HRAs cannot be ACA-compliant, unless:
 - Retiree-only HRAs
 - HRAs only reimburse HIPAA-excepted benefits
 - HRAs are **integrated** with Tricare, Medicare **or other employer-sponsored ACA-compliant group health plan coverage**
 - (Note: Then Congress added QSEHRAs)

HRAs – Under New Proposed Regulations

- Guidance does not repeal IRS Notice 2013-54 or associated regulations
- HRAs remain GHPs subject to ACA market reforms
- Effectively creates two new types of HRAs by:
 1. **Expanding integration concept of Notice 2013-54** to allow for HRA integration with ACA-compliant individual health insurance coverage (i.e., ICHRA)
 2. **Utilizing existing statutory authority under HIPAA to create new *type* of HIPAA-excepted benefits** (i.e., EBHRA)



ICHRAs

New Integration Rules

- The ICHRA must meet 6 requirements:
 1. Enrollment
 2. Classes
 3. Same Terms
 4. Opt-Out
 5. Substantiation
 6. Notice

New Integration Rules

- **UNIVERSAL PROHIBITION** – **CANNOT** offer any individual a choice between an ICHRA or employer-sponsored group health plan coverage!

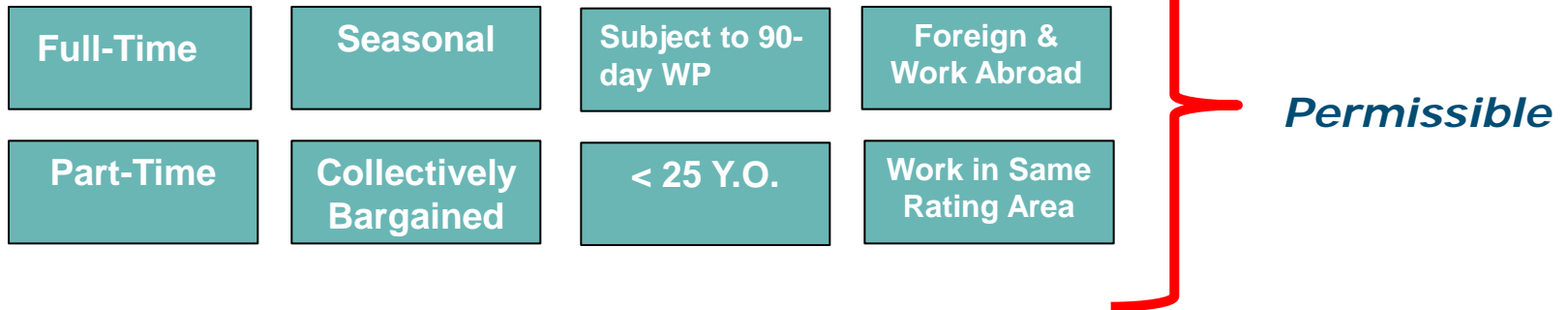
CAUTION!!

Integration Rules: **Enrollment**

- Participant and dependents must be enrolled in individual health insurance coverage
- Must substantiate:
 - Enrollment
 - Each reimbursement request
- Employer **cannot** offer an ICHRA to same employees to whom it offers another group health plan.

Integration Rules: **Classes**

- Employers can divide employees only into specific classes:



-
- Hourly versus salaried
 - Geographic location generally
 - Other

*Appears
NOT
Permissible*

Integration Rules: **Same Terms**

- Must offer the ICHRA on the same terms and conditions to all employees within the same class
- Exceptions for:
 - Age
 - Family size
 - Former employees
- **No** “benign discrimination”

Integration Rules: **Opt-Out**

- ICHRA coverage can make someone ineligible for a premium tax credit
- Employers must allow participants to opt-out of and waive future reimbursements at least annually
- On termination of employment, either:
 - Forfeit; or
 - Opt-out

Integration Rules: **Substantiation**

- ICHRA must have “reasonable” procedures to verify enrollment in individual health insurance
- Must get new verification prior to any expense being reimbursed
- ICHRA may rely on the attestation unless there is **actual knowledge**

Integration Rules: **Notice**

- ICHRA must provide written notice to participants:
 - At least 90 days before the beginning of each plan year; or
 - No later than the date on which the participant is first eligible to participate
- Notice includes several requirements.

ICHRA – Example #1

- Employer offers an ICHRA to all employees but also makes available to full-time employees the option to elect Employer-sponsored group major medical coverage

ICHRA – Example #1

- Employer offers an ICHRA to all employees but also makes available to full-time employees the option to elect Employer-sponsored group major medical coverage
- **Not allowed!**



ICHRA – Example #2

- Employer offers one of its comprehensive major medical plans to full-time employees at its Chicago facility and offers an ICHRA to part-time employees at its Manhattan facility

ICHRA – Example #2

- Employer offers one of its comprehensive major medical plans to full-time employees at its Chicago facility and offers an ICHRA to part-time employees at its Manhattan facility
- **Allowed under proposed rule because ICHRA is only offered to a class of part-time employees in a certain rating area**



EBHRAs

Excepted Benefit HRA (“EBHRA”)

- Creates new HRA that is an excepted benefit

IRC section 9832(c)(2)(C) –

“Such other similar, limited benefits as specified in regulations.”

Excepted Benefit HRA (“EBHRA”)

- Creates new HRA that is an excepted benefit
- 5 requirements:
 1. Offer other major medical coverage
 2. \$1,800 annual limit (subject to annual indexing)
 3. Can reimburse all medical expenses and only premiums or contributions for COBRA, excepted benefit coverage, and STLDI
 4. Made available to all similarly situated employees
 5. Cannot offer both an ICHRA and an EBHRA

EBHRA – Example #1

- Employer offers full-time employees the choice between an EBHRA and an ICHRA

EBHRA – Example #1

- Employer offers full-time employees the choice between an EBHRA and an ICHRA
- **Not allowed!**

CAUTION!!

EBHRA – Example #2

- Employer offers full-time employees major medical coverage and an EBHRA and part-time employees no medical benefits

EBHRA – Example #2

- Employer offers full-time employees major medical coverage and an EBHRA and part-time employees no medical benefits
- **Allowed!**



ERISA Treatment

ERISA Treatment

- Integrated individual coverage is **not** subject to ERISA if five requirements met:
 1. Voluntary participation
 2. **No** employer (s)election or endorsement
 3. Limits on reimbursement
 4. **No** consideration received by employer
 5. Annual notification

ERISA Treatment

- Cafeteria plan is also **NOT** subject to ERISA where offered as “side car” arrangement for purposes of allowing participants to pre-tax employee share of individual insurance coverage



Additional Considerations & Open Issues

Additional Considerations

- Premium Tax Credit Eligibility
- Special Enrollment Opportunities
- Employer Mandate Compliance
- Applicability Date
- Comment Deadline: December 28, 2018

Open Questions/Potential Comments

- Hourly v. Salaried as permissible ICHRA class
- Ability to allow employees to self-sort
- Retiree-specific class
- 4980H(a) “offer”
- 4980H(b) “affordability”
- Ability to use private exchange model
- Substantiation via debit cards
- Scope of expected IRC section 105 guidance
- MSP and Medicare coordination
- EBHRA limits too low?

Questions?