

Federal Agencies Issue Final Regulations Expanding Availability Of HRAs

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On June 13, 2019, the Departments of Treasury, Labor, and Health and Human Services issued final regulations, effective January 1, 2020, that allow an employer to reimburse employee premiums for individual health insurance coverage and Medicare, or certain excepted benefits, through Health Reimbursement Arrangements (HRAs).

While these rules are expected to encourage more—primarily small and midsize—employers to provide some form of health care reimbursement assistance to their employees, or provide employers with more flexibility in doing so, several rules and limitations need to be considered, as summarized below.

In addition, note that individual coverage HRAs still must meet the documentation requirements of ERISA and can constitute an “offer of coverage” for applicable large employers for purposes of the Affordable Care Act’s employer coverage mandate.

Individual Coverage HRAs (ICHRAs)

- Individuals must be enrolled in and substantiate individual health insurance coverage, which may include coverage purchased through an Exchange or Medicare.
- Employers may offer ICHRAs to select classes of employees (e.g., full-time, part-time, salaried, non-salaried, union, non-union, seasonal), but the class must maintain a minimum number of employees depending on

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the employer's size (10 employees of employers with less than 100 employees, 10% of employees of employers with 100-200 employees, and 20 employees of employers with more than 200 employees).

- Employees may not be offered an ICHRA and/or a group health plan – they must be offered only one or the other.
- ICHRA coverage must be offered on the same terms to all employees within a class.
- Participants must be offered the opportunity to opt out of the ICHRA at least annually.
- The ICHRA must provide notice to participants at least 90 days prior to the beginning of the plan year providing details as to the ICHRA coverage.

Excepted Benefit HRAs (EBHRAs)

- Other group health plan coverage that is not limited to excepted benefits (i.e., limited scope dental or vision, or long-term care benefits) must be made available to the participant, even though the participant is not required to participate in such plan.
- The annual benefit under the EBHRA must be limited to \$1,800 (as indexed for inflation).
- The EBHRA must not reimburse premiums for individual health insurance, group health plan, or Medicare coverage.
- The EBHRA must be made available on the same terms to all similarly situated individuals, regardless of health factors.

While these new forms of HRAs certainly will be attractive to many employers, in order to take advantage of the expended options, ICHRAs and EBHRAs will need to satisfy the complex parameters briefly summarized above, as well as ERISA.

Contact an attorney in Laner Muchin's Employee Benefits and Executive Compensation practice group for further details.