Individual Coverage HRA and the Extended Benefit HRA FAQs

COMPLETE PAYROLL SOLUTIONS

Health reimbursement arrangements (HRAs) are a type of account-based health plan that employers can use to reimburse employees for their medical care expenses.

New rules released by the Departments of Labor, Health and Human Services, and the Treasury (collectively, the Departments) permit employers to offer a new "Individual Coverage HRA" as an alternative to traditional group health plan coverage, subject to certain conditions. Among other medical care expenses, Individual Coverage HRAs can be used to reimburse premiums for individual health insurance chosen by the employee, promoting employee and employer flexibility, while also maintaining the same tax-favored status for employer contributions towards a traditional group health plan.

The new rules also increase flexibility in employer-sponsored insurance by creating another, limited kind of HRA that can be offered in addition to a traditional group health plan. These "Excepted Benefit HRAs" permit employers to finance additional medical care (for example to help cover the cost of copays, deductibles, or other expenses not covered by the primary plan) even if the employee declines enrollment in the traditional group health plan.

Q1. What are the benefits of offering an Individual Coverage HRA to employees?

Individual Coverage HRAs can help enable businesses to focus on what they do best— serve their customers— and not on navigating and managing complex health benefit designs. Individual Coverage HRAs provide tax advantages because the reimbursements provided to employees do not count toward the employees' taxable wages. In effect, Individual Coverage HRAs extend the tax advantage for traditional group health plans (exclusion of premiums, and benefits received, from federal income and payroll taxes) to HRA reimbursements of individual health insurance premiums. Employers may also allow employees to pay for off-Exchange health insurance on a tax-favored basis, using a salary reduction arrangement under a cafeteria plan, to make up any portion of the individual health insurance premium not covered by the employee's Individual Coverage HRA.

In most cases, the Individual Coverage HRA rule will increase worker options for health insurance coverage, allowing workers to shop for plans in the individual market and select coverage that best meets their needs. It will also result in coverage being more portable for many workers. 81% of small to midsized employers (fewer than 200 employees) and 42% of larger employers (at least 200 employees) offering health benefits in 2018 provided only one type of health plan to their employees *(Kaiser Family Foundation Employer Health Benefits Survey, 2018, Figure 4.1).*

Q2. How does an Individual Coverage HRA work?

An Individual Coverage HRA reimburses employees for their medical care expenses (and sometimes their family members' medical care expenses), up to a maximum dollar amount that the employer makes available each year. The employer can allow unused amounts in any year to roll over from year to year. Employees must enroll in individual health insurance (or Medicare) for each month the employee (or the employee's family member) is covered by the Individual Coverage HRA. This can be individual health insurance offered on or off an Exchange. However, it cannot be short-term, limited-duration insurance (STLDI) or coverage consisting solely of dental, vision, or similar "excepted benefits." There are other important requirements too. An employer that wants to offer an Individual Coverage HRA should review the HRA rule for more information on the conditions the HRA must meet.

Q3. Why is the HRA rule important for small businesses and their workers?

The HRA rule will provide hundreds of thousands of businesses a better way to offer health insurance coverage and millions of workers and their families a better way to obtain coverage. The HRA rule will especially help small employers, who face larger administrative costs from offering a traditional group health plan, compete for talent. Many small employers struggle to offer coverage to their employees, and a significant number of small employers have stopped offering coverage since 2010. Between 2010 and 2018, the percentage of firms offering coverage declined from 59% to 47% at firms with 3-9 workers, from 76% to 64% at firms with 10-24 workers, from 92% to 71% at firms with 25-49 workers, and from 95% to 91% at firms with 50-199 workers. *(Kaiser Family Foundation Employer Health Benefits Survey, 2018, Figure 2.2)*

Q4. What are the expectations for take-up of the Individual Coverage HRA?

The Departments estimate that once employers fully adjust to the new rules, roughly 800,000 employers will offer Individual Coverage HRAs to pay for insurance for more than 11 million employees and family members, providing these Americans with more options for selecting health insurance coverage that better meets their needs. The Departments estimate that, once fully phased in, about 800,000 people who were uninsured will gain coverage.

The HRA rule, combined with the Administration's rules to expand Association Health Plans (AHPs) and STLDI, has been projected to increase private insurance coverage by nearly 2 million people. (Source: The HRA rule regulatory impact analysis combined with the Congressional Budget Office January 2019 estimates of the AHP and STLDI rule).

Q5. I am an employer. To whom can I offer an Individual Coverage HRA?

If you offer an Individual Coverage HRA, you must offer it on the same terms to all individuals within a class of employees, except that the amounts offered may be increased for older workers and for workers with more dependents. You cannot offer an Individual Coverage HRA to any employee to whom you offer a traditional group health plan. However, you can decide to offer an individual coverage HRA to certain classes of employees and a traditional group health plan (or no coverage) to other classes of employees.

Employers may make distinctions, using classes based on the following status:

- Full-time employees,
- Part-time employees,
- Employees working in the same geographic location (generally, the same insurance rating area, state, or multi-state region),
- Seasonal employees,
- Employees in a unit of employees covered by a particular collective bargaining agreement,
- Employees who have not satisfied a waiting period,
- Non-resident aliens with no U.S.-based income,
- Salaried workers,
- Non-salaried workers (such as hourly workers),
- Temporary employees of staffing firms, or
- Any group of employees formed by combining two or more of these classes.

To prevent adverse selection in the individual market, a minimum class size rule applies if you offer a traditional group health plan to some employees and an Individual Coverage HRA to other employees based on: full-time versus part-time status; salaried versus non-salaried status; or geographic location, if the location is smaller than a state. Generally, the minimum class size rule also applies if you combine any of these classes with other classes. The minimum class size is:

- Ten employees, for an employer with fewer than 100 employees,
- Ten percent of the total number of employees, for an employer with 100 to 200 employees, and
- Twenty employees, for an employer with more than 200 employees

Also, through a new hire rule, employers can offer new employees an Individual Coverage HRA, while grandfathering existing employees in a traditional group health plan.

Q6. How do my employer contributions work?

Employers can contribute as little or as much as they want to an Individual Coverage HRA. However, an employer must offer the HRA on the same terms to all employees in a class of employees, except that employers can increase the amount available under an Individual Coverage HRA based on the employee's age or number of dependents. Also, see Q7 for employers subject to the employer mandate.

Q7. Can an employer offer an Individual Coverage HRA to satisfy the employer mandate?

First, only certain employers – in general, those with at least 50 full-time employees, including full-time equivalent employees, in the prior year – are applicable large employers subject to the employer mandate.

An offer of an Individual Coverage HRA counts as an offer of coverage under the employer mandate. In general, whether an applicable large employer that offers an Individual Coverage HRA to its full-time employees (and their dependents) owes a payment under the employer mandate will depend on whether the HRA is affordable. This is determined under the premium tax credit rule being issued as part of the HRA rule and is based, in part, on the amount the employer makes available under the HRA. Therefore, if you are an applicable large employer and want to avoid an employer mandate payment by offering an Individual Coverage HRA, in general, you will need to contribute a sufficient amount for the offer of the Individual Coverage HRA to be considered affordable.

The Internal Revenue Service will provide more information on how the employer mandate applies to Individual Coverage HRAs soon. For more information on the employer mandate, see https://www.irs.gov/affordable-care-act/employers/employer-shared-responsibility-provisions.

Q8. What other responsibilities do I, the employer, have?

Individual Coverage HRAs must provide a notice to eligible participants regarding the Individual Coverage HRA and its interaction with the premium tax credit. The HRA must also have reasonable procedures to substantiate that participating employees and their families are enrolled in individual health insurance or Medicare, while covered by the HRA. Employees must also be permitted to opt out of an Individual Coverage HRA at least annually so they may claim the premium tax credit if they are otherwise eligible and if the HRA is considered unaffordable.

You generally will not have any responsibility with respect to the individual health insurance itself that is purchased by the employee, because it will not be considered part of your employer-sponsored plan, provided:

- An employee's purchase of any individual health insurance is completely voluntary.
- You do not select or endorse any particular insurance carrier or insurance coverage.
- You don't receive any cash, gifts, or other consideration in connection with an employee's selection or renewal of any individual health insurance.
- Each employee is notified annually that the individual health insurance is not subject to the Employee Retirement Income Security Act (ERISA), which is the federal law governing employer-provided health coverage.

Q9. May an employer allow employees to pay any portion of the premium for their individual health insurance that is not covered by the Individual Coverage HRA on a tax-preferred basis by using a salary reduction arrangement under a cafeteria plan?

It depends on whether the employee buys the individual health insurance on an Exchange or off an Exchange. The Internal Revenue Code provides that an employer may not permit employees to make salary reduction contributions to a cafeteria plan to purchase coverage offered through an Exchange. However, that restriction does not apply to coverage that is purchased off an Exchange. Therefore, if an employee buys individual health insurance outside an Exchange and the HRA doesn't cover the full premium, the employer could permit the employee to pay the balance of the premium for the coverage on a pre-tax basis through its cafeteria plan, subject to other applicable regulations.

Q10. Can large employers offer Individual Coverage HRAs too?

Yes. Although the Departments expect that the rule will especially benefit small and mid-sized employers, employers of all sizes may offer an Individual Coverage HRA, subject to the conditions in the HRA rule.

Q11. What are the benefits of offering an Excepted Benefit HRA?

There may be scenarios in which you wish to offer an HRA in addition to a traditional group health plan, for example to help cover the cost of copays, deductibles, or non-covered expenses. Excepted Benefit HRAs generally allow for higher levels of employer contributions than health flexible spending arrangements (FSAs) and can permit rollover of unused amounts from year to year.

Beginning in 2020, HRAs can be offered as "excepted benefits" which are exempt from many federal health care requirements that don't work well for account-based plans. Employees may use these Excepted Benefits HRAs even if they do not enroll in the traditional group health plan (or in any other coverage), which distinguishes the Excepted Benefit HRA from other HRAs.

To qualify as excepted benefits:

- The annual HRA contribution must be limited to $1,800 per year (indexed for inflation beginning in 2021).
- The HRA must be offered in conjunction with a traditional group health plan, although the employee

is not required to enroll in the traditional plan.

- The HRA cannot be used to reimburse individual health insurance premiums, group health plan premiums (other than COBRA), or Medicare premiums, although it can reimburse premiums for excepted benefits, such as dental and vision coverage, as well as for STLDI.
- The HRA must be uniformly available to all similarly situated individuals (as defined under the Health Insurance Portability and Accountability Act, which generally permits bona fide employment-based distinctions unrelated to health status).

In particular, the Excepted Benefit HRA will benefit some of the growing number of employees who have been opting out of their employer's traditional group health plan because the employee's share of premiums is too expensive. In 1999, 17 percent of workers eligible for employer coverage at small and midsized firms (those with 3 to 199 workers) turned down the offer of employer coverage. By 2011, this share had climbed to 22 percent, and in 2018 it was 27 percent. *(Kaiser Family Foundation Employer Health Benefits Survey, 2018, Figure 3.1)*

Note that Excepted Benefit HRAs, which can reimburse medical care expenses other than excepted benefits, are different from an HRA that reimburses only excepted benefits. Employers can continue to offer HRAs that reimburse only excepted benefits, and those HRAs need not meet the requirements for Excepted Benefit HRAs.

Q12. When can employers start offering Individual Coverage HRAs and Excepted Benefit HRAs?

Employers can start offering Individual Coverage HRAs and Excepted Benefit HRAs on January 1, 2020.

If you choose to offer an Individual Coverage HRA for 2020, you will need to take certain actions before then, including providing the required notice for eligible participants. Employees who want to take advantage of an Individual Coverage HRA with a start date of January 1, 2020, will need to enroll in individual health insurance during the open enrollment period at the end of 2019 (lasting from November 1, 2019 to December 15, 2019), unless they have Medicare.

Employers can also begin offering Individual Coverage HRAs or Excepted Benefit HRAs at a later date.

Q13. How can I get more information?

- Employers and employees can contact the Department of Labor at 1-866-444-3272 or https://www.askebsa.dol.gov. More information regarding Individual Coverage HRAs and Excepted Benefits HRAs is also accessible at: https://www.dol.gov/agencies/ebsa.
- Contact the IRS Office of Chief Counsel, Health and Welfare Branch, at 202-317-5500 (not a toll free number) regarding the federal tax-treatment of employer-provided health coverage.
- For information on special enrollment rights in the individual market for insurance, as well as information on purchasing individual health insurance through the federal Exchange, see https://www.healthcare.gov/coverage-outside-open-enrollment/special-enrollment-period/.