



JANET  
LETOURNEAU

ACFCI, is the compliance manager at WageWorks. She draws upon more than 20 years of experience with flexible benefits plans and tax laws to perform consulting services and monitor quality control.

LeTourneau is a frequent speaker to employer groups and conferences and was formerly on the board of directors for the Employers Council on Flexible Compensation (ECFC) and is a current member of the ECFC Technical Advisory Committee (TAC). She is the lead instructor for the Section 125 administrators training workshop.

LeTourneau was one of the first people in the country to earn the Advanced Certification in Flexible Compensation Instruction designation sponsored by the Employers Council on Flexible Compensation. She is a certified trainer in the ACFCI program.

LeTourneau can be reached by telephone at 262-236-3021 or by email at [jan.letourneau@wageworks.com](mailto:jan.letourneau@wageworks.com).

## The Benefits Brief...

# ACA Changes For Health Reimbursement Arrangements

This is a continuation of my previous article on the Affordable Care Act (ACA) changes affecting health flexible spending arrangements (health FSAs). This month we will discuss requirements for HRAs offered starting January 1, 2014.

On Friday, September 13, 2013, the Treasury published Notice 2013-54 which preserves all health reimbursement arrangements (HRAs) that are integrated with an underlying group health plan but eliminates an employer's ability to use a stand-alone or other tax-favored arrangement, including premium reimbursement arrangements or cafeteria plans, to help employees pay for individual health policies on a tax-free basis. In addition, the notice addresses a number of specific topics related to FSAs and HRAs.

### What Kind of HRAs May Employers Offer?

For HRAs to be offered in compliance with new ACA requirements (beginning January 1, 2014), there is an exhaustive list of plan types that are available.

Most HRAs reimburse all or a subset of eligible medical expenses as described under IRS Code Section 213(d) and can continue if those eligible for the HRA are also eligible for and enrolled in employer-sponsored ACA-compliant group medical coverage, which is called an "integrated HRA." Employer-sponsored ACA-compliant group

medical coverage may be provided by the employer that offers the integrated HRA or employees may certify they have coverage under a spouse's ACA-compliant group medical plan.

However, there are a couple of new rules that go along with integrated HRAs. First, participants must be able to permanently opt out of and waive future reimbursements from the HRA annually and the plan should be designed so that remaining HRA amounts are forfeited upon termination of employment. This enables employees to obtain individual coverage on exchanges and be eligible for premium tax credits.

HRAs exclusively for retirees and/or other former employees can also continue. Participants in a retiree HRA generally would not only be considered as having met the individual mandate (and thus, have no penalty), but also would be considered ineligible for premium tax credits available on the public exchanges, or marketplaces.

In addition, the funds in retiree HRAs may be used to purchase individual coverage. These retiree HRAs must also allow participants to permanently opt out of and waive future reimbursements from the HRA at least annually.

Under a somewhat aggressive interpretation, HRAs that reimburse just vision or dental expenses may go forward into 2014.

Under current regulations, limited-scope dental or vision benefits will be excepted from the ACA's market reform provisions *if they are provided under a separate policy, certificate, or contract of insurance, or are otherwise not an integral part of a group health plan...*

The regulation further provides that benefits are not an integral part of a group health plan unless (1) a participant has the right to elect not to receive coverage for the benefits and (2) if a participant elects to receive coverage for the benefit, the participant must pay an additional premium or contribution for that coverage.

Consequently, because an HRA is not an insured arrangement, in order for dental or vision benefits provided through an HRA to be excepted from the ACA, employees who elect to have dental or vision coverage provided by the HRA must be charged a premium or contribution. This is problematic since an HRA must be paid for solely by the employer and not provided pursuant to salary reduction election or otherwise under a Section 125 cafeteria plan.

Notice 2013-54 did not address this issue at all, but this seems like an area in which Treasury could provide relief by issuing guidance that an employee's payment of a premium for dental or vision benefits on an after-tax basis under a stand-alone HRA would not result in the plan losing its status as an HRA.

### What If an Employer Has an Ineligible HRA?

Unused amounts that were credited to the HRA may be used to reimburse medical expenses in accordance with the terms of the HRA with no additional employer funds added to the plan. This is called a spend-down option.

This spend-down option may apply to all participants in the ineligible HRA or apply to one individual participant who is no longer covered by an employer-sponsored ACA-compliant group medical plan.

HRAs may no longer reimburse individually owned insurance policies. Employers sponsoring HRAs or who plan to implement HRAs or other tax-advantaged plans to allow participants to pay their individually owned policy premiums with pre-tax dollars can no longer do so.

The IRS and Treasury Department made an important change in closing this option so that employers cannot easily eliminate group coverage or send their employees to a public exchange yet still offer tax-free reimbursement for the payment of non-group coverage.

Employers need to be aware that any reimbursement or payment of individual coverage—inside or outside of an exchange—cannot be made with tax-advantaged funds.

### San Francisco Health Care Ordinance HRA

The ACA eliminates the use of an HRA

to deliver benefits to comply with the San Francisco Health Care Ordinance (SFHCO). However, it does allow HRAs and other state, local and tribal governments' HRAs to continue until the later of January 1, 2014, or the first day of the plan year following the close of a regular legislative session after September 13, 2013.

**Ninety-day waiting period.** In order for active-employee HRAs to retain their integrated status, they can only be made available to employees who are also eligible for and enrolled in underlying ACA-compliant health coverage. Thus, HRAs must assure that their waiting periods are no less than that of the underlying health coverage. Note that the ACA requires that waiting periods for entry into the plan not exceed 90 days (60 days in California, plus other states may vary).

If the HRA document does not currently reflect these terms, a simple amendment to the plan can be adopted that states the eligibility and entry dates into the HRA are the same as the underlying health insurance plan. This ensures no disconnect if the waiting period changes in the health insurance plan. 🌐

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