



Compliance Update - 05/24/2016

Healthcare Reform Changes the Game on HRAs

A repeat performance, an encore – call it whatever you want. The Internal Revenue Service (IRS) is repeating and clarifying information detailed in IRS [Notice 2013-54](#) because of questions, including certain business practices, in the flexible benefits arena addressed to the IRS and Treasury.

IRS [Notice 2015-87](#), released December 16, 2015, discusses Health Reimbursement Arrangements (HRAs) and Healthcare Flexible Spending Accounts (FSAs) integration and individual market coverage. This is the second of three Compliance Alerts we're issuing in response to topics addressed in this Notice.

Health Reimbursement Arrangements (HRAs)

Retiree HRAs

An HRA that covers fewer than two participants who are current employees, commonly known as retiree or other former-employee plans, are not subject to market reforms, do not have to be integrated with employers' group health plans, and may purchase individual market coverage. This includes retiree plans that determine coverage limits based on amounts credited to individuals' accounts while they were current employees.

However, a participant in a retiree HRA, with available funds for any month, will not be eligible for a premium tax credit under Section 36B for that month. HRA plans must contain "opt out" language in order to give participants the option to forgo HRA coverage and obtain health insurance plans and premium tax credits at the Marketplace.

Current-Employee HRA

On the other hand, a current-employee HRA may not reimburse individual market coverage under any circumstances. A current-employee HRA that permits the purchase of individual market coverage constitutes a group health plan that fails to meet the market reforms because it is not integrated with another Affordable Care Act (ACA)-compliant group health plan.

For example, Notice 2015-87 clarifies the intent of Notice 2013-54, Q&A-5, which allowed unused amounts credited to an HRA while integrated with other group health plan coverage to be used in accordance with the preexisting terms of a current-employee HRA that is still integrated with a group health plan. The answer to Q&A-5 assumed that those preexisting terms would not provide a current employee the ability to purchase duplicative or substitute individual coverage. This is yet another clarification that current-employee HRA plans that include terms permitting the purchase of individual coverage constitutes a group health plan that fails to meet the market reforms because it is not integrated with another group health plan.

However, the current-employee HRA can allow participants to purchase excepted benefits such as dental and vision coverage.

Previously Credited Amounts

After Notice 2013-54 took effect, some employers with HRAs, who did not offer employer-sponsored group health insurance, could no longer continue their HRA. A transition rule allowed the unused funds to be carried forward and used in subsequent years provided no further funds were added.

As long as the HRA was in effect as of January 1, 2013 and no additional funds were added as of January 1, 2014, the HRA can be spent down by reimbursing healthcare expenses and even reimbursement of individually-owned health insurance policy premiums without violating the prohibition against the annual dollar limit prohibition or the preventive services requirements.

Self-Only/Family HRAs

An HRA may only reimburse the medical expenses of spouses or children of HRA participants if both the participant and their dependents have group health insurance coverage through either the participant's, the spouse's, or dependent child's employer.

IRS officials informally confirmed that a certification by the participant assuring eligible coverage elsewhere would suffice, but further guidance would be welcome on this point.

The good news, plan sponsors have until January 1, 2017 to comply or for the IRS to issue clarifications.

Excepted Benefits

An HRA or employer payment plan may reimburse participants or pay directly for premiums of individual market coverage if the coverage is only for excepted benefits. This includes benefits such as individual dental and vision coverage.

However, individual health insurance market coverage, not considered an excepted benefit, may not be reimbursed or paid from an HRA or employer payment plan under any circumstances.

This clarification does not merely look at whether HRAs reimburse or pay for individual insurance coverage, but also the type of individual insurance coverage HRAs purchase.

Cafeteria Plans

Even if an employer payment plan (EPP) is offered through a cafeteria plan under IRS Code Section 125, whether with employee salary redirection or employer contributions, the cafeteria plan cannot be integrated with the individual market coverage purchased through this type of EPP. Individual coverage cannot be offered through a cafeteria plan under any circumstances because it fails to satisfy market reforms.

In closing, unless the employer's HRA is considered a retiree or former-employee plan or a legacy HRA, premiums for individual marketplace health insurance coverage may not be reimbursed or paid on a tax-free basis from the employer through an HRA. In addition, cafeteria plans cannot be used to purchase individual market coverage.

Review your flexible benefits plans to ensure compliance with integration and payment rules.

Sincerely,
Your Team at WageWorks



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WageWorks
1100 Park Place 4th Floor
San Mateo, CA 94403
servicenotice@wageworks.com

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