

## Rules Finalized Permitting Employees to Buy Individual Health Insurance Plans through HRAs

By: Dana Petrillo  
*Healthcare Alert*  
6.18.19

On June 13, 2019, the U.S. Departments of Health and Human Services, Labor and the Treasury issued final rules that will expand the use of health reimbursement arrangements (HRAs), which are a type of account-based health plan that employers can use to reimburse employees for their medical care expenses. The unpublished final rule is scheduled to be published on June 20, 2019, after which it can be found at the Federal Register.

Starting in January 2020, employers will be able to use new "Individual Coverage HRAs" as an alternative to traditional group health plan coverage to provide their workers with tax-preferred funds to pay for the cost of health insurance coverage purchased by employees in the individual market, subject to certain conditions.

The rule also creates limited "Excepted Benefit HRAs," which employers may offer in addition to a traditional group health plan, to help cover the cost of co-pays, deductibles or non-covered expenses. 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 short-term limited duration insurance; and
- 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).

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.

The Trump administration estimates that the new rule will benefit about 800,000 employers and more than 11 million employees and their families, including 800,000 previously uninsured people. Critics contend that the proposal could allow employers to push higher-risk employees away from company-sponsored coverage and into individual coverage offered through the Affordable Care Act's marketplaces.

### What This Means for Employers

Employers must decide whether to offer Individual Coverage HRAs to employees. Employers who offer an Individual Coverage HRA must offer it on the same terms and 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) and cannot offer an Individual Coverage HRA to any employee who is offered a traditional group health plan. However, employers can decide to offer an Individual Coverage HRA to certain classes of employees

and a traditional group health plan to other classes of employees (for example, for full-time versus part-time employees or for employees working in a certain location, etc.), so long as the minimum class size rule is followed.

An offer of an Individual Coverage HRA counts as an offer of coverage under the employer mandate for those employers with at least 50 full-time employees. Applicable large employers can avoid an employer mandate payment by offering an Individual Coverage HRA, so long as the employer contributes a sufficient amount for the offer of the Individual Coverage HRA to be considered affordable.

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 Individual Coverage HRA.

Employers must also decide whether to offer an Excepted Benefit HRA, in addition to a traditional group health plan. Employees may use 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.

Employers can start offering Individual Coverage HRAs and Excepted Benefit HRAs on January 1, 2020. If an employer chooses to offer an Individual Coverage HRA for 2020, it 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.

If you have questions or need more information, contact Dana Petrillo (215.864.7017; petrillod@whiteandwilliams.com) or another member of the Healthcare Group.

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.

