INDIVIDUAL COVERAGE HRA

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Provided by Lawley

Individual Coverage HRAs – Paying Individual Insurance Premiums

Beginning in 2020, employers of all sizes may implement a new HRA design – an individual coverage HRA (ICHRA) – to reimburse their eligible employees for insurance policies purchased in the individual market or Medicare premiums.

Final rules released by the Departments of Labor, Health and Human Services (HHS) and the Treasury (Departments) permit employers to offer an ICHRA as an alternative to traditional group health plan coverage, subject to certain conditions. One of these conditions is that employees and dependents who are covered by an ICHRA must be enrolled in individual insurance coverage or Medicare coverage for each month they are covered by the ICHRA. Also, employers that sponsor ICHRAs must comply with an annual notice requirement.

Employers may allow employees to pay for off-Exchange health insurance on a tax-favored basis, using a Section 125 cafeteria plan, to make up any portion of the premium that is not covered by the employer's ICHRA.

LINKS AND RESOURCES

- Final rules on ICHRAs, released by the Departments on June 13, 2019
- FAQs on the final rules, which include the model substantiation form and the model annual notice

HIGHLIGHTS

ICHRA – KEY POINTS

- New benefit option available to employers, effective for plan years beginning on or after Jan. 1, 2020.
- Can reimburse eligible employees for individual insurance premiums and Medicare premiums.

ICHRA - CONDITIONS

- Employers cannot offer any employee a choice between an ICHRA and a traditional group health plan.
- Covered individuals must be enrolled in individual insurance coverage (or Medicare coverage).
- Employers must generally offer the ICHRA on the same terms to all employees within a class of employees.
- Employers must provide an annual notice to covered employees.

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BACKGROUND

An HRA is a type of account-based group health plan that is funded solely by employer contributions and reimburses eligible employees for medical care expenses, up to a maximum dollar amount for a coverage period.

HRAs are an attractive option for employers and employees due to their **tax-favored status**. Employers may take a federal income tax deduction for HRA contributions. Any reimbursements that employees receive from their HRAs for medical care are excludable from the employees' income and wages for federal income and employment tax purposes.

HRA Design – ACA Changes

Most HRAs cannot satisfy certain Affordable Care Act (ACA) market reforms on their own, such as the ACA's coverage requirement for preventive health services and its ban on annual limits. To avoid violating the ACA, HRAs must be integrated with other health plan coverage that complies with these mandates. Prior to the new rules for ICHRAs, HRAs were only permitted to integrate with other group health plan coverage and Medicare (in limited situations).

Before ICHRAS become available in 2020, employers cannot use HRAs to reimburse employees for individual health insurance premiums without violating the ACA and risking exposure to excise taxes of $100 per day for each applicable employee. This restriction does not apply to HRAs that are exempt from the ACA's reforms, such as QSEHRAs, retiree-only and HRAs that only reimburse excepted benefits (such as limited scope dental and vision coverage).

On June 13, 2019, the Departments issued final rules that expand the usability of HRAs. Effective for plan years beginning on or after Jan. 1, 2020, the final rules allow HRAs to be integrated with individual insurance policies (or Medicare) for purposes of satisfying the ACA's reforms.

This means that, **effective for 2020, HRAs may be used to reimburse employees for the cost of individual health coverage (or Medicare coverage) on a tax-free basis**, subject to certain conditions.

NEW TYPE OF HRA – ICHRA

Beginning in 2020, employers may use ICHRAs to reimburse employees for their individual health insurance premiums (or Medicare premiums), subject to the conditions outlined below. Most of these conditions are intended to mitigate the risk that health-based discrimination could increase adverse selection in the individual market. The final rules also create a new special enrollment period for the individual market for individuals who newly gain access to an ICHRA.

Although the Departments expect that ICHRAs will be most popular with small and mid-sized employers, employers of all sizes may offer an ICHRA.

KEY POINT

A key restriction for ICHRAs is that employers cannot offer any employee a choice between an ICHRA and a traditional group health plan. However, as explained below, employers with ICHRAs may continue to offer a traditional group health plan provided these benefits are offered to different classes of employees.

Eligible Expenses

An ICHRA may provide for reimbursement of expenses for medical care, as defined under Internal Revenue Code (Code) section 213(d). An employer has discretion to specify which medical care expenses are eligible for reimbursement from its ICHRA.

An employer may allow an ICHRA to reimburse all medical care expenses, may limit an ICHRA to allow reimbursements only for premiums, may limit an ICHRA to allow reimbursements only for non-premium medical care expenses (such as cost-sharing) or may designate specific medical care expenses that will be reimbursable.

Although not required, it is expected that most employers will use ICHRAs to reimburse premiums for individual health insurance coverage or Medicare (including Medicare Part A, B, C or D, as well as premiums for Medigap policies).

Enrollment Requirement

An employee who is covered by an ICHRA must be enrolled in individual health insurance coverage (or Medicare coverage) for each month that he or she is covered by the ICHRA. This coverage requirement also applies to any family members (such as spouses and children) who are covered by the ICHRA.

All individual health insurance policies, except for individual health insurance coverage that consists solely of excepted benefits or short-term, limited-duration insurance (STLDI), will satisfy this enrollment requirement. For example, individual insurance coverage includes:

- ✓ Individual insurance coverage purchased on an ACA Exchange;
- ✓ Individual insurance coverage purchased outside of an ACA Exchange (including coverage purchased through a private exchange model);
- ✓ Student health insurance coverage; or
- ✓ Catastrophic health insurance coverage.

Medicare coverage includes Medicare Parts A and B or Part C.

If any individual ceases to be covered by individual health insurance coverage (or Medicare coverage), the ICHRA cannot reimburse medical care expenses incurred by that individual after the coverage ceases.

Substantiation Requirement

The ICHRA must implement (and comply with) reasonable procedures to substantiate that participants and each dependent covered by the ICHRA are (or will be) enrolled in individual health insurance coverage or Medicare coverage for the plan year. Reasonable substantiation procedures may consist of documentation by a third party (for example, an insurance card or explanation of benefits document) or a participant's attestation.

In general, the deadline for providing this substantiation cannot be later than the first day of the plan year. After this initial substantiation, the ICHRA must require participants to substantiate this individual insurance coverage prior to each expense reimbursement.

The Departments have provided a **model substantiation form** for employers to use.

Cannot Offer Traditional Group Health Plan to Same Employees

If an employer offers an ICHRA to a class of employees, the employer cannot also offer a traditional group health plan to the same class of employees. A traditional group health plan refers to a group health plan other than an account-based group health plan or a group health plan that consists solely of excepted benefits. This means that an employer cannot offer a choice between an ICHRA and a traditional group health plan to any employee or dependent.

Same Terms

Employers can contribute as little or much as they want to an ICHRA. However, an employer must offer the ICHRA on the **same terms to all employees within a class of employees**, subject to a few specific exceptions, described below. Unused amounts may be carried forward from year to year, as long as the carryovers are provided on the same terms to all employees within a class.

Employers cannot vary their ICHRA contributions based on a percentage (for example 80%) of employees' individual health insurance premiums. Also, employers cannot offer a more generous ICHRA benefit based on an employee's adverse health factor, such as diabetes, chronic illnesses or cancer. This type of "benign discrimination" is prohibited by the final rules.

Employee Classes

Employers with ICHRAs may make distinctions between different groups of employees, using the following employee classes:

- Full-time employees;
- Part-time employees;
- Employees who are paid on a salary basis;
- Non-salaried employees (for example, hourly employees);
- Employees whose primary site of employment is in the same rating area;
- Seasonal employees;
- Employees who are covered by a collective bargaining agreement (CBA);
- Employees who have not satisfied a waiting period for coverage;
- Non-resident aliens with no U.S-based income;
- Temporary employees of staffing firms; and
- Any group of employees formed by combining two or more of these classes.

The final rules clarify that the classes of employees are determined based on the employees of a common law employer, rather than the employees of a controlled group of employers.

Also, if an employer offers an ICHRA to former employees, a former employee is considered to be a member of the same class of employees that he or she was in immediately before separation from service. Keep in mind that employers may continue to offer retiree-only HRAs, which are not subject to the ACA's market reforms or the rules for ICHRAs.

Minimum Class Size

A **minimum class size requirement** applies if an employer offers a traditional group health plan to some employees and an ICHRA to other employees based on the following classes: full-time versus part-time status; salaried versus non-salaried status; or geographic location if the location is smaller than a state. The minimum class size requirement also applies if an employer combines any of these classes with other classes, except this requirement does not apply to a group of employees that is a combination of one of these classes and a class of employees who have not satisfied the waiting period.

The minimum class size is determined prior to the start of the ICHRA plan year and depends on the employer's size, as follows:

- ✓ Employers with fewer than 100 employees: at least 10 employees
- ✓ Employers with 100-200 employees: at least 10% of the total number of employees

✓ Employers with more than 200 employees: at least 20 employees

Whether a class of employees satisfies the minimum class size requirement for a plan year is based on the number of employees in that class who are offered the ICHRA as of the first day of the plan year.

Exceptions to Same Terms Requirement

Employers that offer an ICHRA to a class of employees must offer the ICHRA on the same terms and conditions to all of the employees within the class, subject to the following exceptions:

EXCEPTIONS	
Age	An ICHRA's maximum dollar amount may increase as the participant's age increases, if: • The same maximum dollar amount attributable to the increase in age is made available to all participants who are the same age; and • The maximum dollar amount made available to the oldest participant is not more than three times the maximum dollar amount made available to the youngest participant.
Number of Dependents	An ICHRA's maximum dollar amount may increase as the number of a participant's dependents who are covered under the ICHRA also increases, so long as the same maximum dollar amount attributable to the increase in family size is available to all participants in that class of employees with the same number of dependents covered by the HRA.
New Participants	For employees whose coverage under the ICHRA becomes effective after the start of the plan year, the maximum dollar amount may be the same as the amount available to employees whose coverage starts on the first day of the plan year, or the maximum dollar amount can be pro-rated for the portion of the year that the employee is covered by the ICHRA.

Special Rule for New Hires

To help employers transition from offering a traditional group health plan to an ICHRA, the final rules include a special rule that permits employers to offer new employees an ICHRA, while grandfathering existing employees in a traditional group health plan. An employer may set the new hire date prospectively for a class of employees as any date on or after Jan. 1, 2020. The ICHRA must be offered on the same terms to all participants in the new hire subclass.

Example: For 2021, an employer offers all employees a traditional group health plan. For 2022, the employer offers all employees hired on or after Jan. 1, 2022, an ICHRA on the same terms and continues to offer the traditional group health plan to employees hired before that date.

Opt-out Requirement

Employees must be permitted to opt out of an ICHRA so they may claim the premium tax credit under the ACA, if they are otherwise eligible for the premium tax credit and the ICHRA is considered unaffordable. An employer may establish timeframes for enrollment in (and opting out of) the ICHRA but, in general, the opportunity to opt out must be provided **in advance of the first day of the plan year**.

Annual Notice Requirement

Employers with ICHRAs must provide a notice to eligible participants regarding the ICHRA and its interaction with the ACA's premium tax credit. In general, this notice must be provided at least 90 days before the beginning of each plan year. For participants who are not eligible at the beginning of the plan year (such as new hires), the notice must be provided by the time the participant is first eligible to participate in the ICHRA.

The Departments provided a **model notice** for employers to use to satisfy this notice requirement.

An individual who is eligible for an ICHRA is not eligible for an ACA premium tax credit for any month when the individual is enrolled in the ICHRA or the individual opts out of the ICHRA but the ICHRA is considered "affordable" under the ACA's rules. HHS expects that, by November 2019, it will provide resources to help individuals determine their eligibility for a premium tax credit when they are offered an ICHRA.

EMPLOYEE PRE-TAX CONTRIBUTIONS

If the ICHRA does not cover employees' full premiums for individual insurance coverage, the employer may permit employees to pay the balance of the premiums on a pre-tax basis through its Section 125 cafeteria plan. However, the Internal Revenue Code (Code) prohibits employers from allowing employees to pay for Exchange coverage on a pre-tax basis. This prohibition does not apply to coverage that is purchased outside of an ACA Exchange.

HSA ELIGIBILITY

Employees who have individual insurance coverage under a high deductible health plan (HDHP) may want to make contributions to a health savings account (HSA). Employers may offer a choice between an ICHRA that is compatible with an HSA and an ICHRA that is not HSA-compatible to a class of employees without violating the final rules. An HSA-compatible ICHRA may reimburse individual insurance premiums and other medical expenses after the HDHP deductible has been satisfied, but cannot reimburse first-dollar cost-sharing under the HDHP.

ERISA COMPLIANCE

In general, an ICHRA is a group health plan that is subject to ERISA. This means that the ICHRA is subject to ERISA's reporting and disclosure rules (for example, the SPD requirement and Form 5500) and its

fiduciary requirements. The final rules provide that the individual insurance policies are not considered part of the employer's ERISA plan if the following safe harbor criteria are met:

- ✓ An employee's purchase of any individual health insurance is completely voluntary;
- ✓ The employer does not select or endorse any particular insurance carrier or insurance coverage;
- ✓ The employer does not receive any cash, gifts or other consideration in connection with an employee's selection or renewal of any individual insurance coverage;
- ✓ Each employee is notified annually that the individual health insurance coverage is not subject to ERISA. (The model notice for ICHRAs includes this notification.)

EMPLOYER SHARED RESPONSIBILITY RULES

The ACA's employer shared responsibility rules, also known as the employer mandate or "pay or play" rules, require applicable large employers (ALEs) to offer minimum essential coverage that is affordable and provides minimum value to their full-time employees, or pay a penalty.

According to the Departments, an offer of coverage under an ICHRA counts as an offer of coverage under the ACA's employer mandate rules. In general, whether an ALE that offers an ICHRA to its full-time employees (and their dependents) owes a penalty under the employer mandate rules will depend on whether the ICHCRA is considered affordable. This means that, to avoid a penalty, ALEs with ICHRAs will need to contribute a sufficient amount for the ICHRA offer of coverage to be considered affordable to their full-time employees.

The IRS expects to provide more guidance on how the employer mandate applies to ICHRAs in the future.