

## Overview of the New Federal HRA Regulation



### Pre-Reg Health Reimbursement Arrangements



An HRA is an employer-funded group health plan for the payment of IRS-defined medical expenses on a pre-tax basis and thus has tax benefits for both the employer and employee. Neither employer contributions nor employee reimbursements from an HRA are subject to income or employment taxes under federal law. HRAs qualify for pre-tax treatment because they are considered group health plans. As group health plans, HRAs couldn't be used to pay premiums for individual coverage.

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### Pre-Reg Health Reimbursement Arrangements



An HRA:

- Must be funded solely by employer contributions;
- Could only be used to reimburse an employee for the medical expenses (as defined by the IRS) of the employee, dependents, or children up to age 27 up to a maximum dollar amount.

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### Pre-Reg Health Reimbursement Arrangements



As a group health plan, an HRA had to comply with ACA group health plan requirements – most notably prohibition of annual dollar limits on EHBs and coverage of preventive services without cost-share. To satisfy these requirements, an HRA had to be integrated with other group health plan coverage that meets these requirements. Put another way, HRA contributions could only be sheltered from taxation if it was coupled with an ACA-compliant group health plan (not an individual policy).

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### Pre-Reg Health Reimbursement Arrangements



Qualified Small Employer HRAs (QSEHRAs) are an option for employers with fewer than 50 full-time equivalent employees that are not subject to the employer mandate and that do not offer a group health plan. Qualifying small employers can opt to fund a QSEHRA to pay or reimburse employees for premiums for minimum essential coverage.

This can include minimum essential coverage in the *individual market*. Similar to the treatment of other group-based coverage, if an employee is provided with a QSEHRA that is considered "affordable," neither the employee nor their dependents are eligible for premium tax credits through the marketplace.

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### Post-Reg HRAs



The final rule makes two major changes to the regulation of HRAs:

- **FIRST**, the final rule allows employers to provide an HRA that is integrated with **individual health insurance coverage**. The final rule refers to this as an "individual coverage HRA." (ICHRA.) An ICHRA can be offered to current and former employees and their dependents. For purposes of the rule, "individual health insurance coverage" refers to coverage offered in the individual market as well as fully insured student health insurance. It does NOT include short-term, limited-duration insurance, coverage that consists solely of excepted benefits, health care sharing ministries, or TRICARE.

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## Post-Reg HRAs



An ICHRA can pay premiums for individual coverage. Employers can specify which medical care expenses are eligible for ICHRA reimbursement; reimbursement may be allowed only for premiums, non-premiums (such as cost-sharing), or particular medical expenses. The rule prohibits an employee who is offered or receives an “affordable” ICHRA from being eligible for premium tax credits.

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## Post-Reg HRAs



An employer can offer an ICHRA as long as it follows the new integration rules.

- Must be offered on the same terms to employees in the same class of employees (full time/part time, geographic location, salaried/hourly, etc.) except older employees and employees with more dependents can be offered more).
- Notice explaining how the ICHRA works with PTCs and that plan isn't subject to ERISA
- Procedure to verify employee/dependents are enrolled in an individual plan or Medicare

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## Post-Reg HRAs



An employer can offer an ICHRA as long as it follows the new integration rules (cont.).

- Annual opt out for those eligible for PTC
- Purchase of an individual plan is voluntary
- No endorsement of specific carrier or plan
- No kickbacks
- No salary reductions for exchange-plan premiums

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## Post-Reg HRAs



- **SECOND**, the rule allows employers to offer new “excepted benefits HRAs.” These can be funded up to \$1,800 and used to pay premiums for excepted benefits, short-term plans, and COBRA premiums.
- **Special Enrollment Periods:** The rule creates a one-time SEP for employees who newly gain access to or are newly provided an ICHRA or QSEHRA. The SEP is available for coverage offered both on and off the marketplace (60 days before or after the triggering event to select a QHP).

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## Implementation Timeline



### LATE SUMMER/EARLY FALL 2019

- Healthcare.gov tool will assist consumers in determining if HRA offer is considered affordable. The tool will also educate consumers on whether or not to apply any tax credit for which they're determined eligible.

### JANUARY 1, 2020

- Employers may begin offering ICHRAs.

### LATE MARCH 2020

- SEP verification functionality will be built into Healthcare.gov and will include the SEP associated with the HRA rule.

### MAY 2020

- HRA Tool will include the affordability calculation and tax credit eligibility.

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## Concerns About the New Regulation



**Risk Shifting/Dumping:** Employers could try to

1. Incentivize employees with health conditions to accept the HRA and move away from a group health plan and into the individual market;
2. Offer an HRA only to employees with health issues or offer a group health plan that does not adequately cover high-cost conditions, thus driving an employee with that condition into the HRA and individual market;
3. Shift its entire (sicker) workforce to the individual market.

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## Concerns About the New Regulation

**Risk Shifting/Dumping (cont.):** If employers were able to “dump” their high-risk employees into the individual market through an HRA (with the goal of reducing their own group health plan costs), it could have significant consequences for the individual market risk pool. This could result in worse overall risk profiles and lead to higher premiums, higher federal outlays for premium tax credits, and a higher uninsured rate.

**Gray-Market Plans:** Confusion about the new rule or weak enforcement could lead healthier workers with HRAs to purchase short-term or other non-compliant plans further weakening the individual market.

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## Consumer Implications

- Key risks for employees and employers:
  - Incorrect advanced premium tax credit (APTC) determinations
  - Confusion about requirement to purchase coverage **OFF**-Marketplace, potentially resulting in repayment of PTCs
  - Confusion about requirement to purchase ACA-compliant coverage, resulting in negation of tax benefits for employer
- Higher individual premiums due to a sicker individual market

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## Consumer Implications cont.

- A low-income employee of an employer that previously didn't offer coverage but begins to offer to HRAs could be ineligible for PTCs if the HRA is deemed affordable
- New 3:1 cap on age adjustments for HRA contributions means shifting from traditional employer sponsored insurance (ESI) to an HRA will generally benefit younger workers at the expense of older workers

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## Possible State Action

### Marketplace and DFR:

Educate consumers and brokers about the new rules and the risks

- FAQs, explainers, and outreach aimed at employer, brokers, and benefit advisors
- FAQs, explainers, outreach, and additional model notices aimed at consumers offered HRA

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## Possible State Action

### DFR:

- Require brokers to provide disclosures to employers
- Require issuers, brokers, and web-brokers to provide disclosures to consumers
- Require brokers and issuers to acquire signed consumer attestations
- Reduce deceptive marketing by monitoring market conduct and complaints

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## Possible State Action

### Other State Agencies:

BOLI

- Required notices to employees
- Employer and employee education

DOR

- Decouple from HRA provisions of federal tax law

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