**FINAL RULES ON HEALTH REIMBURSEMENT ARRANGEMENTS (HRAs) TO PAY FOR INDIVIDUAL HEALTH COVERAGE PREMIUM OR REIMBURSE EXCEPTED BENEFIT COSTS**

The Departments of Treasury, Labor, and Health and Human Services (HHS) released a Final Rule to allow employers to offer, to a class of employees, either (a) an individual health insurance coverage HRA (ICHRA) that assists employees with the purchase of individual health coverage on or off the exchange marketplace (not short-term, limited duration coverage); or (b) an HRA to be used to reimburse certain excepted benefit costs. The Final Rules are effective for plan years beginning on or after January 1, 2020 and apply to all size employers. *Funding of the HRA is made by the employer*. The new rules may help employers to reduce their healthcare cost while still remaining compliant with the ACA. The rules are complex and may not apply to all situations.

**BACKGROUND**

On October 12, 2017, President Trump issued an Executive Order to expand employers’ ability to offer HRAs to their employees and to allow HRAs to be used in conjunction with no group coverage. The proposed rule was released by the agencies October 2018 and noted that the final rule was promulgated after the agencies reviewed over 500 comments.

**HRA FINAL RULES Individual Care HRA (ICHRA)**

The HRA offered by an employer may be used in connection with the purchase of individual health coverage either on or off the public Marketplace, but it may not be used to reimburse premiums for short-term, limited-duration insurance.

An ICHRA is subject to the following:

* **Use of Cafeteria Plan**: An employer may permit an employee covered by an ICHRA who purchases individual health insurance coverage outside of an Exchange to pay the balance of the premium for the coverage through its cafeteria plan, subject to all applicable cafeteria plan guidance.
* **Applicable Large Employers (ALE)**: HRAs (other than excepted benefit HRAs described below) are considered group health plans and, as such, are Minimum Essential Coverage and can be used to the avoid Penalty A of the Employer Shared Responsibility/Play or Pay mandate if they meet the affordability threshold.
* **Classes of Employees**: The ICHRA must be available to employees on a class-by-class basis and must be offered on the same terms to each participant within the individual class of employees. Within a class of employees, an employer may not offer some employees a traditional group health plan and others an ICHRA. Neither can the employer, within a class of employees, offer any employee a choice between a traditional group health plan or an ICHRA. ICHRAs may be offered on different terms to different classes of employees.

**HRA FINAL RULES Individual Care HRA (ICHRA) continued**

* **Minimum Class Size Requirement**: The minimum number of employees included in a class depends on the number of employees employed by the employer on the first day of the ICHRA. The applicable class size minimum is as follows:

• 10, for an employer with fewer than 100 employees;

• 10 percent of the total number of employees, for an employer with 100 to 200 employees

• 20, for an employer that has more than 200 employees.

* **Maximum Amount of ICHRA**: The maximum dollar amount made available to the oldest employee(s) may not be more than three times the maximum dollar amount made available to the youngest employee(s). In addition, the HRA amounts may be based on the number of an employee’s dependents covered by the ICHRA.
* **Written Notice**: A written notice must be provided to each employee at least 90 calendar days before the beginning of each plan year for any participant.
* **Special Enrollment Period (SEP**): A new SEP was established to allow employees and their dependents to enroll in individual health insurance coverage or to change from one individual health insurance plan to another, outside of the annual open enrollment period if they gain access to an ICHRA.
* **Opt Out**: A participant who is otherwise eligible for an ICHRA must be permitted to opt out of and waive future reimbursements at least annually to be eligible for premium tax credits under the ACA..
* **Substantiation**: Ongoing employer substantiation is required to verify that individuals whose medical care expenses are reimbursable by the ICHRA are, or will be, enrolled in individual health insurance coverage in any month an expense is incurred.

**Offering Excepted Benefit HRA’s**

Employers that offer traditional group health coverage may offer Excepted Benefits HRAs (EBHRA). Amounts made available in an EBHRA may not exceed $1,800, indexed for inflation for plan years beginning after December 31, 2020. The following conditions also apply:

* The EBHRA must be made available under the same terms to all similarly situated individuals, regardless of any health factor.
* ICHRAs may not be integrated with individual health insurance coverage that consists solely of excepted benefits.
* The EBHRA cannot provide reimbursement for premiums for traditional health insurance coverage. It could be used to pay premiums for coverage that consists solely of excepted benefits (such as stand-alone dental or vision benefits) and for other premiums, such as premiums for short-term plans (STLDI coverage). However, reimbursement of STLDI coverage is not permissible if offered by a small employer.
* The employee is not required to enroll in the group health plan to participate in the EBHRA.
* An employer cannot offer an HRA for purchase of individual health coverage and an HRA for excepted benefits to the same class of employees.