Compliance Update

ACRISURE Benefits Group

Health Reimbursement Arrangements (HRAs)—Changes for 2014

HRAs are employer-funded arrangements that reimburse employees for certain medical expenses on a tax-free basis, up to a maximum dollar amount for a coverage period. In general, the rules surrounding HRAs have been less strict than for other types of tax-advantaged medical savings accounts, providing employers with flexibility in designing their HRAs.

While some employers have paired their HRAs with coverage under a high deductible health plan (HDHP) or a non- HDHP, other employers have offered stand-alone HRAs (that is, HRAs not offered in connection with other group health plan coverage). Some employers have also questioned whether HRAs may be used to purchase coverage in the individual market for 2014, including through the ACA's Exchanges.

The Affordable Care Act (ACA) includes reforms that limit the availability of HRAs beginning in 2014. Under these reforms, most stand-alone HRAs will be prohibited. Also, HRAs will not be able to reimburse employees for their individual insurance policy premiums. However, HRAs that are integrated with other group health coverage will not violate the ACA and will continue to be permissible.

ACA IMPACT

The following chart provides an overview of the ACA's impact on different types of HRAs, effective for plan years beginning on or after Jan. 1, 2014.

Type of HRA	Status in 2014
Integrated HRA	Permitted if the HRA satisfies one of the integration methods described below
Stand-alone HRA	Not allowed. Stand-alone HRAs must be converted to integrated HRAs or terminated.
HRA used to reimburse individual market coverage	Not allowed
Stand-alone, retiree-only HRA	Permitted (exempt from the ACA's reforms)

ACA REFORMS

The ACA requires non-grandfathered group health plans to cover certain preventive care services without imposing any cost-sharing. For plan years beginning on or after Jan. 1, 2014, the ACA prohibits group health plans from placing annual dollar limits on the coverage of essential health benefits. Because they are group health plans, HRAs are subject to these ACA reforms.

On Sept. 13, 2013, the Internal Revenue Service (IRS) and the Department of Labor (DOL) issued technical guidance on how the ACA's reforms apply to HRAs. This guidance is contained in IRS Notice 2013-54 and DOL Technical Release 2013-03. It applies for plan years beginning on or after Jan. 1, 2014, but can be applied for all prior periods.

Effective for plan years beginning on or after Jan. 1, 2014, whether an HRA will be permitted mainly depends on whether the HRA is integrated with other group health coverage or a stand-alone HRA.

Integrated HRAs vs. Stand-alone HRAs

- An **HRA that is integrated with a group health plan** will comply with the ACA's annual limit prohibition and preventive care requirements if the group health plan with which the HRA is integrated complies with the ACA requirements. Thus, integrated HRAs will still be allowed in 2014.
- **Stand-alone HRAs** will not be able to satisfy the ACA's annual limit and preventive care reforms on their own and, thus, will no longer be available.

The IRS and DOL's guidance includes two ways for an HRA to be considered integrated with another group health plan. The agencies' guidance also confirms that an HRA used to purchase coverage on the individual market cannot be integrated with that individual market coverage. Thus, HRAs cannot be used to purchase health coverage on the individual market for employees.

In addition, retiree-only HRAs are exempt from the ACA's market reforms. These types of stand-alone HRAs will continue to be available for 2014 and later years.

INTEGRATED HRAs

An HRA will be integrated with a group health plan for purposes of the ACA's annual dollar limit prohibition and prevent care requirements if it meets the requirements under one of the integration methods described below.

Under both methods, integration does not require that the HRA and the coverage with which it is integrated share the same plan sponsor, the same plan document or governing instruments or file a single Form 5500, if applicable.

Method One—Limiting HRA Reimbursements, Minimum Value Not Required

An HRA is integrated with group health coverage if the following conditions are satisfied:

- The employer offers a group health plan (other than the HRA) to employees that does not consist solely of excepted benefits;
- Employees with the HRA are actually enrolled in a group health plan (other than the HRA) that does not consist solely of excepted benefits, regardless of whether the employer sponsors the plan (non-HRA group coverage);
- The HRA is available only to employees who are enrolled in non-HRA group coverage, regardless of whether the employer sponsors the non-HRA group coverage (for example, the HRA may be offered only to employees who do not enroll in the employer's group health plan but are enrolled in other non-HRA group coverage, such as a plan maintained by the employer of the employee's spouse);
- Under the terms of the HRA, an employee (or former employee) is permitted to permanently opt out of and waive future reimbursements from the HRA at least annually and, upon termination of employment, either the remaining amounts in the HRA are forfeited or the employee is permitted to permanently opt out of and waive future reimbursements from the HRA; and
- The HRA is limited to reimbursement of one or more of the following—copayments, coinsurance, deductibles and premiums under non-HRA group coverage, as well as medical care that does not constitute essential health benefits.

Method Two—Minimum Value Required, No Limit on Reimbursements

Alternatively, an HRA that is not limited with respect to reimbursements as described above is integrated with group health coverage if the following conditions are satisfied:

- The employer offers a group health plan to employees that provides minimum value under the ACA;
- Employees with the HRA are actually enrolled in a group health plan that provides minimum value, regardless of whether the employer sponsors the plan (non-HRA group coverage);
- The HRA is available only to employees who are enrolled in non-HRA minimum value group coverage, regardless of whether the employer sponsors the non-HRA minimum value group coverage (for example, the HRA may be offered only to employees who do not enroll in the employer's group health plan but are enrolled in other non-HRA minimum value group coverage, such as a plan maintained by the employer of the employee's spouse); and
- Under the terms of the HRA, an employee (or former employee) is permitted to permanently opt out of and waive future reimbursements from the HRA at least annually and, upon termination of employment, either the remaining amounts in the HRA are forfeited or the employee is permitted to permanently opt out of and waive future reimbursements from the HRA.

TRANSITION RELIEF FOR STAND-ALONE HRAs

Effective for plan years beginning on or after Jan. 1, 2014, stand-alone HRAs (other than retiree-only HRAs) will not be permitted. A set of frequently asked questions (FAQs) from January 2013 addressed how amounts that are credited or made available under HRAs under terms in effect prior to Jan. 1, 2014, will be treated.

The FAQs anticipated that future ACA guidance would provide that, whether or not an HRA is integrated with other group health plan coverage, unused amounts credited before Jan. 1, 2014 (consisting of amounts credited before Jan. 1, 2013, and amounts that are

credited in 2013 under the terms of an HRA as in effect on Jan. 1, 2013), may be used after Dec. 31, 2013, to reimburse medical expenses without violating the ACA's annual limit requirements. However, if the HRA terms in effect on Jan. 1, 2013, did not prescribe a set amount to be credited during 2013 or the timing for crediting these amounts, then the amounts credited may not exceed those credited for 2012 and may not be credited at a faster rate than the rate that applied during 2012.

The IRS and DOL's guidance from Sept. 13, 2013 does not address this transition relief, making it unclear whether employers can rely on it for 2014. Additional guidance on this issue would be helpful.

ACTION STEPS

The ACA's changes for HRAs are effective for plan years beginning on or after Jan. 1, 2014. In advance of the effective date, employers should review their HRA's design to determine whether it can satisfy one of the integration methods described above. To meet the requirements for integration, employers will likely need to:

- Amend the HRA plan document's eligibility rules and reimbursement policies and procedures;
- Evaluate whether the non-HRA group health coverage provides minimum value;
- Create procedures for verifying a participant's group health plan coverage if the HRA is available to employees enrolled in group health coverage that is not sponsored by the employer; and
- Establish opt-out procedures for HRA coverage, including procedures that apply when an employee terminates employment.

Also, employers with stand-alone HRAs will need to either terminate their HRAs or amend them to satisfy one of the integration methods.