

## HEALTH REIMBURSEMENT ARRANGEMENTS: DEATH BY A THOUSAND CUTS

### Overview

A health reimbursement arrangement (HRA) is a type of group health plan that reimburses an employee, including former employees, for tax-qualified medical expenses (including premiums) incurred by the employee, his or her spouse, and children through the year in which the children attain age 26. Another variation on the HRA theme is an employer payment plan (EPP), which is used to reimburse an employee for his or her after-tax premium payments, up to a predetermined dollar amount.

As an ERISA group health plan, HRAs become subject to the panoply of compliance requirements, including COBRA, summary plan description (SPD) and Form 5500 requirements, and then some. HRAs are funded solely by the employer (no pretax employee contributions can be made, under Tax Code Section 125's rules). HRAs differ from other account-based health plans, such as health flexible spending accounts or health savings accounts (please click for details on the differences between [FSAs and HSAs](#)).

### ACA Kills Most Stand-alone HRAs for Active Employees

HRAs and EPPs are problematic under the Affordable Care Act's (ACA's) prohibition on dollar limits for essential health benefits because, by their nature, they provide benefits limited to a specific dollar amount. Agency guidance requires that HRAs for active employees be coupled to (or integrated with) major medical coverage. The other type of HRA, which is prohibited for active employees, is a stand-alone HRA.

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Why the regulatory hostility toward HRAs? The agencies responsible for the ACA do not want employers to be able to reimburse employees, even on a taxable basis, for premium payments they make for coverage purchased on a health insurance exchange, or marketplace.

As discussed in a previous [alert](#), to qualify as integrated, an HRA must meet the following four requirements:

- ❖ **The employer offers other group coverage to the employee** (something more robust, for example, than an excepted benefit, such as most dental and vision plans or most health flexible spending accounts).
- ❖ **The employee covered by the HRA is actually enrolled in group coverage in addition to the HRA** (the other group coverage must again be more robust than an excepted benefit). In addition, the terms of the HRA must reflect that only employees enrolled in other group coverage are eligible for HRA benefits.
- ❖ **The HRA's reimbursements are limited to one or more of the following: co-payments, coinsurance, deductibles and premiums under the other group coverage, as well as medical care that does not constitute an "essential health benefit" under the ACA.** This requirement does not apply, however, if the other group coverage supplies at least "minimum value" coverage (coverage with a least a 60 percent actuarial value).
- ❖ **The HRA permits a covered employee or former employee to choose, at least annually, to permanently opt out of the HRA.** This same opt-out offer must be made at termination of employment unless the HRA balances are forfeited upon termination.



Beginning in 2017, if an employee has single (employee-only) coverage under a group plan that includes an HRA, the HRA cannot be used to reimburse the employee for the out-of-pocket medical expenses of the employee's spouse or dependents. In other words, expenses that can be reimbursed under the HRA are limited to individuals who are covered by the medical plan.

When could an employer use a stand-alone HRA or EPP?

- ❖ **Retiree HRA.** For pre-65 retirees, but the HRA coverage will disqualify the retiree from getting a tax credit if he or she purchases coverage on an insurance exchange.
- ❖ **Limited-use HRA (for active employees or retirees).** An HRA that only reimburses for dental and vision expenses, or EPPs that only reimburse for dental and vision premiums.

## Affordability and HRAs

IRS guidance has also addressed how monies allocated to HRAs that are coupled with health plans (integrated HRAs) affect the affordability calculation. Newly available amounts under an integrated HRA will count toward affordability only if the HRA monies can be used 1) for premiums under the health plan with which the HRA is integrated, or 2) for premiums and cost sharing. The HRA contribution is treated as ratably earned each month during the plan year. For example, the \$1,200 annual employer HRA contribution described above would reduce an employee's required premium payment for single coverage by \$100 each month for affordability purposes.

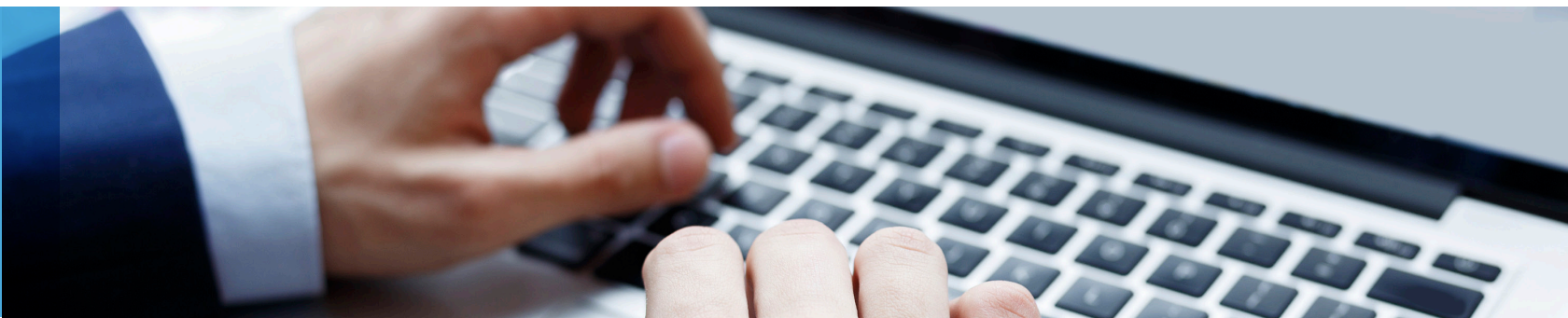
## Other Issues that Affect HRAs

- ❖ **W-2 health values.** An employer may, but is not required to, include HRA coverage in the health plan values shown on the employee's W-2.
- ❖ **SBCs.** An integrated HRA benefit must be described somehow in the major medical plan's SBC. Stand-alone, retiree-only plans—whether benefitting pre-65 or post-65 retirees, or both—dodge the SBC requirement because they are treated as “excepted benefits” and thus are not subject to the SBC requirements.
- ❖ **PCORI fee.** The Patient-Centered Outcomes Research Institute (PCORI) fee does not apply to separate HRAs where the HRA and the allied medical plan are self-insured and have the same plan year. Otherwise, the HRA sponsor owes the fee with respect to the HRA, but pays only for covered employees and retirees (not dependents).
- ❖ **Transitional reinsurance.** This fee does not apply to integrated HRAs. Stand-alone HRAs may be subject to the fee unless an exception applies.
- ❖ **Cadillac tax.** HRA allocations are included in the tax calculation, but the IRS has yet to describe the mechanics.
- ❖ **ACA Tax Reporting (Forms 1095).** An integrated HRA will not trigger a reporting requirement. By contrast, an HRA that was integrated with another employer's coverage (e.g., coverage under an employee's spouse's plan) or was not integrated with other coverage at all (e.g., a \$5,000 HRA provided to certain retirees) would be self-insured MEC-or-better that is subject to the reporting requirement mandate.



### How the ACA Applies to HRAs and EPPs

	HRAs	EPPs
Subject to ACA's market reforms, such as annual dollar limit prohibition?	<ul style="list-style-type: none"> <li>❖ No, for integrated HRAs for employees.</li> <li>❖ Yes, for nonintegrated HRAs for employees; nonintegrated HRAs for employees are prohibited.</li> <li>❖ No, for HRAs structured as excepted benefits.</li> <li>❖ No, for retiree-only HRAs.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Yes, for employees; EPPs for employees are prohibited.</li> <li>❖ No, for retiree-only EPPs.</li> </ul>
Qualifies as minimum essential coverage for purposes of the individual mandate?	<ul style="list-style-type: none"> <li>❖ Yes, but is a moot point with respect to employees (the group coverage with which the HRA must be integrated is also minimum essential coverage).</li> <li>❖ Yes, for retirees, whether or not the HRA is integrated.</li> <li>❖ No, for HRAs structured as excepted benefits.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Yes, for employees and retirees.</li> </ul>
Disqualifies the covered individual from subsidies in a public insurance exchange?	<ul style="list-style-type: none"> <li>❖ Yes, for employees, retirees, and covered dependents, unless the HRA is structured as an excepted benefit.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Yes, for employees and retirees.</li> </ul>
Requirements for integration.	<ul style="list-style-type: none"> <li>❖ Employer offers other group coverage.</li> <li>❖ HRA requires the employee to be enrolled in other group coverage (even if through another employer or sponsor).</li> <li>❖ HRA reimbursements limited to deductibles, co-payments, coinsurance, and/or premiums under the group coverage; and to nonessential health benefits (this requirement is waived if group coverage supplies "minimum value").</li> <li>❖ HRA offers opt-out right annually and at termination unless HRA balance is forfeited at termination.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Not applicable; integration not possible.</li> </ul>



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