COMPLIANCE
UPDATE

AssuredPartners

2ND QUARTER 2019

Expanded HRA Options

The IRS, DOL, and HHS (the "agencies") have issued final regulations expanding the availability and permitted uses of health reimbursement arrangements (HRAs), finalizing proposed regulations that were issued in 2018. This final rule was issued in response to a 2017 executive order directing federal agencies to expand access to HRAs.

Effective January 1, 2020, the final rule establishes two new types of HRAs:

1) Individual Coverage HRA (ICHRA) - HRA that can be integrated with, and reimburse premiums for, individual health insurance coverage if certain conditions are met.

- **Enrollment in Individual Coverage.** Employees and dependents covered by ICHRAs must be enrolled in individual health insurance coverage (which does not include short-term limited-duration insurance (STLDI) or coverage consisting solely of excepted benefits) or Medicare (see below). Substantiation of enrollment is required annually on or before the first day of the plan year (or when coverage begins, if later) and before each reimbursement.
- **Same Terms and Conditions.** An ICHRA must be offered on the same terms and conditions to all employees within a class, except that the benefit amount may increase based on age or family size. The preamble notes that while HRAs are generally subject to the Code § 105(h) nondiscrimination rules, those rules do not apply to HRAs that reimburse only insurance premiums. The IRS intends to propose regulations to address contribution variations based on age.
- **Traditional Health Plan Not Offered.** The ICHRA sponsor cannot offer a "traditional" group health plan (one that is neither account-based nor limited to excepted benefits) to the same class of employees that is offered an ICHRA. Several permitted classifications are offered, with a few changes from the proposed regulations (e.g., salaried and non-salaried classes have been added), as well as a new minimum class size requirement that applies in certain circumstances.
- **Opt-Outs, Waivers, and Notices.** ICHRA participants must be able to opt out and waive future reimbursements annually before each plan year. Upon termination of employment, participants must either forfeit the remaining balance (subject to COBRA) or be able to permanently opt out of and waive future reimbursements. Eligible employees must receive timely written notices with specified information.
- **Eligible Expenses; HSA Compatibility.** ICHRAs can be designed to reimburse all Code § 213(d) medical care expenses or to limit reimbursements to particular expenses (e.g., premiums). Thus, ICHRAs can be designed to be HSA-compatible by only reimbursing premiums or limiting reimbursements in accordance with the HSA rules. Employees in the same class can be offered a choice between an HSA-compatible ICHRA and one that is not HSA-compatible.
- **Medicare.** ICHRAs can also be integrated with Medicare Parts A and B or Part C and can reimburse premiums for Medicare (all parts) and Medicare supplemental insurance. However, an ICHRA that is subject to the Medicare secondary payer (MSP) requirements may not limit reimbursement to expenses not covered by Medicare. HHS plans to issue further guidance on Medicare requirements and ICHRAs.

2) Excepted Benefit HRAs (EBHRAs) - Non-integrated HRAs that qualify as excepted benefits (EBHRAs) and thus are not subject to the PHSA mandates, if the following requirements are met:

- **Other Coverage.** The employer must offer a traditional group health plan to the EBHRA participants (enrollment is not required) for the plan year.
- **Limited Benefits.** No more than $1,800 (indexed after 2020) can be newly available to each participant for each plan year. Carryovers permitted under the EBHRA are disregarded, but amounts available under other HRAs or account-based group health plans are counted, unless those arrangements reimburse only excepted benefits.
- **Reimbursement.** An EBHRA may reimburse Code § 213(d) medical expenses but not premiums for individual health coverage, Medicare, or non-COBRA group coverage (premiums for coverage consisting solely of excepted benefits can be reimbursed). STLDI premiums can also be reimbursed, although the agencies may restrict small employers' EBHRAs from allowing such reimbursement under certain circumstances.
- **Uniform Availability.** The EBHRA must be available under the same terms and conditions to all similarly situated individuals (as defined under HIPAA's health status nondiscrimination rules). An EBHRA cannot be offered to employees who are also offered an ICHRA.

Other Related Provisions

Cafeteria Plan Salary Reductions
Employers with ICHRAs can allow employees to use pre-tax cafeteria plan salary reductions to pay any portion of their individual insurance premiums not covered by the ICHRA, so long as the coverage is purchased outside of an Exchange and subject to applicable cafeteria plan guidance. If offered, salary reductions must be available on the same terms and conditions to all employees within a class.

Premium Tax Credit/Employer Shared Responsibility
Employees and dependents covered by an ICHRA-or offered an affordable ICHRA-are ineligible for premium tax credits. Affordability is based on the premium for the lowest-cost silver plan available in the rating area where the employee resides, amounts available under the ICHRA, and the employee's household income.

The IRS notes that applicable large employers can avoid employer shared responsibility penalties by offering an affordable ICHRA to full-time employees and indicates that more information, including proposed regulations, will be provided.

ERISA Plan Status of Individual Health Coverage
A DOL regulation amends the definitions of "employee welfare benefit plan" and "welfare plan" as used in ERISA to provide a safe harbor excluding individual health insurance funded by an ICHRA if certain requirements are met. Among other things, the purchase of the insurance must be completely voluntary for employees; the ICHRA sponsor must not select or endorse any particular insurer or coverage (including a menu of coverage such as a private exchange); and participants must be notified annually that the individual coverage is not subject to ERISA. The exclusion applies only to the individual coverage; the HRA's ERISA status is unaffected.

Special Enrollment Period

An HHS regulation establishes an individual market special enrollment period for employees and their dependents who gain access to an ICHRA or are provided with a QSEHRA, allowing them to enroll in individual insurance coverage or change from one individual coverage plan to another.

Additional Resources:

New Release
FAQs
Source: Thomson Reuters/EBIA

Form 5500 is due by July 31st

Employers with calendar year ERISA plans have until July 31, 2019 to file Form 5500 for 2018 with the Department of Labor (DOL). Should you need an extension, you may file Form 5558 by July 31, 2019 to receive an extra two and one-half months to file.

Unless an exemption applies, the Form 5500, along with required schedules, must be filed each year by employee benefit plans to report the financial conditions, investments and operations of the plan.

The Form 5500 series is intended to protect the rights and benefits of plan participants and beneficiaries by assuring that:
- Employee benefit plans are operated and managed in accordance with certain prescribed standards
- Employee benefit plan participants and beneficiaries are provided with or have access to sufficient plan information

In addition, the Form 5500 series is an important compliance, research and disclosure tool for the DOL, as well as a source of information and data for use by other federal agencies, Congress and the private sector.

Electronic Filing is Required

ERISA requires the plan administrator or plan sponsor of each ERISA plan to file Form 5500 electronically through EFAST2. EFAST2 is an all-electronic system designed by the Department of Labor, Internal Revenue Service, and Pension Benefit Guaranty Corporation to simplify and expedite the submission, receipt, and processing of the Form 5500 and Form 5500-SF.

Penalties

The DOL has the authority under ERISA to assess penalties of up to $2,140 per day for each day an administrator fails or refuses to file a complete Form 5500. The penalties may be waived if the noncompliance was due to reasonable cause. In addition, ERISA provides for criminal penalties for willful violations of its reporting requirements.

Reduced Penalties - If your welfare plan is late in filing a 5500 form, or your plan never filed a 5500 form because you were not aware that your plan had to do so, the DOL has a correction program, the Delinquent Filer Voluntary Compliance Program (DFVCP), to file late forms with reduced penalties. However, this program cannot be used once the DOL finds the employer's error through an audit or investigation.

President Trump's Latest Executive Order

On June 24, 2019, President Trump signed an executive order designed to increase pricing and quality transparency in health care as well as expanding abilities under high deductible health plans (HDHP) with health savings accounts (HSAs).

Below are the steps the executive order outlines to achieve these goals.

Price Transparency

- **Within 60 days of the order,** HHS Secretary Alex Azar will propose a regulation to require hospitals to post their pricing information publicly. This published information is to be delivered in a consumer-friendly and easy-to-understand format. It should include charges and information based on insurance-negotiated prices and shoppable services or items. The HHS' proposed legislation should also require the regular updating of this information.
- **Within 90 days of the order,** the secretaries of HHS, the Treasury and Labor will issue an advance notice of proposed rulemaking that would require providers, insurers and self-insured health plans to provide patients with information about expected out-of-pocket costs for medical items or services before they receive care. This advance notice of proposed rulemaking will solicit comments as well.
- **Within 180 days of the order,** the secretary of Treasury shall propose regulations to treat medical expenses that relate to certain types of health arrangements as eligible medical expenses under section 213(d) of title 26, United States Code. The order states that this could potentially include expenses related to direct primary care or health care sharing ministries.
- **Within 180 days of the order,** a report that describes how the government or private sector is hindering transparency in health care quality and pricing for consumers will be delivered. The HHS secretary will work in consultation with the attorney general and Federal Trade Commission to draft the report.

Medical Spending Accounts (HSAs/FSAs)

- **Within 120 days of the order,** the secretary of Treasury will issue guidance to expand consumers' ability to choose high deductible health plans with health savings accounts.
- **Within 180 days of the order,** the secretary of treasury will also issue guidance that increases the amount of funds in flexible spending accounts that can carry over without penalty at the end of each year.

Quality of Care Transparency

- **Within 180 days of the order,** secretaries of HHS, Defense and Veterans Affairs will develop a roadmap to help align and improve data and quality reporting measures across various programs, including Medicare, Medicaid and the Marketplace.
- **Within 180 day of the order,** the secretary of HHS, in consultation with the secretaries of the Treasury, Defense, Labor and Veterans Affairs, and the Director of the Office of Personnel Management, shall increase access to de-identified claims data from taxpayer-funded health care programs and group health plans. Increasing this access will aid in developing tools designed to empower patients to make more informed decisions regarding their health care.

Surprise Medical Billing

- **Within 180 days of the order,** the secretary of HHS shall submit a report detailing any additional steps that are necessary to implement the surprise medical billing principles that were laid out on May 9 to the president.

The executive order does not change any laws or regulations, and its ultimate impact will not be known until the agencies issue the requested regulations and guidance. We will continue to monitor any developments regarding the order and provide updates as necessary.

Additional Resources:

Executive Order
Fact Sheet

Source: Zywave, Inc.

HDHP/HSA Limits Increase for 2020

LIMITS	2020	2019	Change Amount
High Deductible Health Plan (HDHP) Limits			
• HDHP Minimum Deductible – Self Only	$1,400	$1,350	$50
• HDHP Minimum Deductible – Family	$2,800	$2,700	$100
• HDHP Out-of-Pocket Maximum – Self Only	$6,900	$6,750	$150
• HDHP Out-of-Pocket Maximum – Family	$13,800	$13,500	$300
Health Savings Accounts (HSA) – Contribution Limits			
• Self Only	$3,550	$3,500	$50
• Family	$7,100	$7,000	$100
• Catch-Up Contributions (age 55 and older)	$1,000	$1,000	No change

New EEOC Wellness Rules Expected by December

The Equal Employment Opportunity Commission (EEOC) has announced its plans to issue new proposed rules on permissible wellness incentives under the Americans with Disabilities Act (ADA) by the end of 2019.

As you may recall, the EEOC issued final wellness program rules in May 2016 which included a 30% limit for wellness incentives. However, in 2018 a federal judge vacated this incentive limit, effective January 1, 2019. Consistent with the court ruling, the EEOC removed the incentive limit from the final wellness program rules.

The EEOC has indicated that it will publish new proposed rules on employer-sponsored wellness programs by December 2019. The proposed rules are expected to provide guidance to employers on the permissible incentive limits for wellness plans that ask for health information or include medical exams.

ACA Limits, Penalties and Fees (2015-2020)

LIMITS	2020	2019	2018	2017	2016	2015
Out-of-Pocket Maximum on Essential Health Benefits						
• Self Only	$8,150	$7,900	$7,350	$7,150	$6,850	$6,600
• Family	$16,300	$15,800	$14,700	$14,300	$13,700	$13,200

Employer Shared Responsibility (Employer Mandate)

LIMITS	2020	2019	2018	2017	2016	2015
Affordability Safe Harbor Percentage	Not yet announced	9.86%	9.56%	9.69%	9.66%	9.56%

Employer Mandate Penalties - Calendar Year

LIMITS	2020	2019	2018	2017	2016	2015
Subsection (a) penalty: Failure to offer coverage to 95% or more of FT employees (70% for 2015)	$2,590	$2,500	$2,320	$2,260	$2,160	$2,080
Subsection (b) penalty: Failure to offer coverage that is affordable and meets minimum value	$3,890	$3,750	$3,480	$3,390	$3,240	$3,120

Fees - Paid by Health Plan (Per Covered Life)

LIMITS	2020	2019	2018	2017	2016	2015
Transitional Reinsurance Fee	N/A	N/A	N/A	$0	$27.00	$44.00
PCORI Fee (for plan years ending 1/1 - 9/30	N/A	$2.45	$2.39	$2.26	$2.17	$2.08
PCORI Fee (for plan years ending 10/1 - 12/31)	N/A	N/A	$2.45	$2.39	$2.26	$2.17

Did You Know?

Employers have until **Sept. 30, 2019**, to submit pay and work-hour ("Component 2") data from both 2017 and 2018 as part of their 2018 EEO-1 Reports.

This announcement followed a federal court decision that required the EEOC to collect Component 2 data from 2018 and to decide whether it would collect that data from either 2017 or 2019 as well. The EEOC chose to require the 2017 information and indicated that a system for employers to submit the Component 2 data from both 2017 and 2018 will be available starting in mid-July 2019.

With some exceptions, the following entities must file EEO-1 Reports every year:

- **A private employer that has 100 or more employees** (with limited exceptions for schools and other organizations);
- **A private employer with between 15 and 99 employees**, if it is part of a group of employers that legally constitutes a single enterprise employing 100 or more employees; and
- **A federal contractor that has 50 or more employees** and is either a prime contractor or first-tier subcontractor, and has a contract, subcontract or purchase order amounting to $50,000 or more.

Employers that are subject to EEO-1 reporting should begin preparing their 2018 EEO-1 reports and closely monitor the EEO-1 website for additional guidance on the Component 2 data.

Should you have any questions or concerns about any of the topics addressed in this Newsletter, please contact a member of your AssuredPartners compliance team.