

Final Regulations Offer New Health Coverage Options for Employers

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Final regulations were recently released by the U.S. Departments of Labor, Health and Human Services, and the Treasury (collectively, the “**Departments**”) which create two new options for providing employer-sponsored group health coverage under a health reimbursement arrangement (“**HRA**”). The Departments also issued a set of FAQs which outline key points regarding these new HRA options and other changes reflected in the regulations. An HRA is a type of account-based health plan that employers may use to reimburse employees for their medical care expenses. **Individual Coverage HRA** The first option, an “**Individual Coverage HRA**,” may be offered by employers as an alternative to coverage under a traditional group health plan (“**Traditional GHP**”), subject to certain conditions. In effect, Individual Coverage HRAs extend the federal tax advantages that are afforded to Traditional GHPs (i.e., exclusion of premiums and benefits received from federal income and payroll taxes) to HRA reimbursements of an individual’s health insurance premiums. Specific conditions must be met with respect to the establishment and administration of an Individual Coverage HRA, including:

1. An employee must enroll in individual health insurance (other than short-term limited duration insurance or coverage consisting solely of dental, vision, or similar “**excepted benefits**”) or Medicare for each month the employee (or his family member) is covered by the Individual Coverage HRA.
2. An employer may not offer an Individual Coverage HRA to any employee to whom it offers a Traditional GHP; provided, however, the employer can offer an Individual Coverage HRA to certain classes of employees and a Traditional GHP (or no coverage) to other classes of employees.
3. Employers that decide to sponsor an Individual Coverage HRA must provide a notice to eligible individuals regarding the Individual Coverage HRA and its interaction with the premium tax credit under the Affordable Care Act. Such employers must also maintain reasonable procedures to substantiate that employees and their families who participate in the Individual Coverage HRA are enrolled in individual health insurance or Medicare while covered by the HRA.

Importantly, the Departments confirmed in the FAQs that (i) an employer’s offer of an Individual Coverage HRA constitutes an “**offer of coverage**” for purposes of the employer mandate under the Affordable Care Act (i.e., the “**play-or-pay rules**”) and (ii) employers who are subject to the mandate (generally, those with at least 50 full-time employees, including full-time equivalents, in the prior year) may meet the requirements of the mandate by offering an Individual Coverage HRA that is “**affordable**.” **Excepted Benefit HRA** The second option, an “**Excepted Benefit HRA**,” may be offered by an employer in addition to a Traditional GHP, even if the employee declines enrollment in the Traditional GHP. If an HRA meets the requirements of an Excepted Benefit HRA, it will be exempt from certain federal health care requirements, such as those under the Affordable Care Act. In order to qualify as an Excepted Benefit HRA, the HRA must meet specific conditions, including:

1. The annual HRA contribution must be limited to \$1,800 per year (indexed for inflation beginning in 2021).

2. The HRA must be offered in conjunction with a Traditional GHP, although the employee is not required to enroll in the Traditional GHP.
3. The HRA may reimburse the cost of copays, deductibles, or non-covered expenses, but may not be used to reimburse individual health insurance premiums, group health plan premiums (other than COBRA), or Medicare premiums (although it can reimburse premiums for excepted benefits, such as dental and vision coverage, as well as for short-term limited duration insurance).

Effective Date of the New Options Employers may begin offering Individual Coverage HRAs and Excepted Benefit HRAs as of January 1, 2020. An employer that chooses to offer an Individual Coverage HRA for 2020 will need to take certain actions before then, including distributing the required notice to eligible individuals. [View the final regulations.](#) [View the FAQs.](#)