"Stand-Alone" HRAs Are Back – Sort Of

Individual Coverage HRAs May Offer Simpler Means For Compliance With Employer Mandate

The U.S. agencies in charge of issuing guidance under the Patient Protection and Affordable Care Act (ACA) recently finalized regulations that essentially reverse prior agency guidance on stand-alone health reimbursement arrangements. The new guidance will make "individual coverage health reimbursement arrangements" a potentially viable alternative for compliance with the ACA's employer mandate, beginning in 2020.

Background

A health reimbursement arrangement (HRA) is an employer-sponsored, and exclusively employer-funded, group health plan under which a covered employee may seek reimbursement for eligible medical expenses incurred by the employee and the employee's eligible dependents. HRAs typically include an annual cap on the amount of the available reimbursements (e.g., up to $5,000 per employee per year), with any used portion being forfeited at year-end (although some HRAs allow unused amounts to be carried over to subsequent years).

Because the ACA generally prohibits a group health plan from imposing an annual or lifetime limit on plan benefits, prior agency guidance indicated that HRAs could not be offered to employees on a stand-alone basis. Rather, HRAs could be offered to employees only if the HRA was provided in conjunction with (i.e., was "integrated" with) actual coverage under a separate ACA-compliant group health plan. (The integration requirement does not apply to retiree-only HRAs or to limited HRAs offered by certain employers with less than 50 full-time employees.) Prior agency guidance also prohibited HRAs (even integrated HRAs) from reimbursing a covered employee for premium costs that the employee incurred to acquire an employee-owned health insurance policy directly from an insurance company.

The recent agency guidance provides a new method by which an employer may offer HRAs on a "stand-alone" basis.[1] Beginning January 1, 2020, so-called "individual coverage HRAs" will not violate the ACA and may provide a simplified means by which an "applicable large employer" can comply with the ACA's employer mandate. Individual coverage HRAs may (and almost always will) include a cap on the amount available for reimbursement each year and can allow for reimbursement of employee-paid premiums on health insurance policies acquired directly by covered employees from sources of their own choosing.

1 The recent agency guidance also describes "excepted benefit HRAs" (not covered by this Information Memo). As the name suggests, excepted benefit HRAs can reimburse expenses only for benefits that are excepted from coverage under HIPAA's rules (such as dental and vision benefits). These HRAs, which can be offered in 2020, must be offered in conjunction with an employer's traditional group health plan, but enrollment in an excepted benefit HRA is not contingent on enrollment in a traditional group health plan.

Individual Coverage HRA Requirements/Limitations

Individual coverage HRAs are subject to the following (among other requirements):

1. the employees to whom individual coverage HRAs are offered may not also be offered the opportunity to enroll in the employer's basic/traditional group health plan (if any);

2. an employee can be eligible for reimbursements only if the employee has actually acquired, maintains and substantiates coverage under an individual health insurance policy (including Medicare and a policy acquired on an ACA insurance exchange);

3. coverage may be offered to one or more specified classes of employees, provided that each class satisfies applicable minimum class size requirements and that, within each class, coverage is offered on the same terms and conditions to all class members who are the same age or have the same number of eligible dependents;

4. eligible employees must be given 90 days advance written notice that includes (among other things) the terms of the individual coverage HRA, the maximum annual individual (self-only) reimbursement, the maximum annual family reimbursement (if applicable), a statement that coverage under the HRA results in ineligibility for an ACA premium tax credit, and a statement about how the participant may find assistance for determining whether their individual coverage HRA is affordable for ACA purposes; and

5. participants must be able to opt out of and waive future reimbursement from the individual coverage HRA once each year (e.g., during open enrollment).

Compliance with ACA Employer Mandate

An "applicable large employer" (generally one that employs 50 or more full-time or full-time equivalent employees) must offer group health plan coverage to at least 95 percent of its full-time employees or face exposure to potentially significant excise taxes under the shared responsibility (i.e., employer mandate) provisions of the ACA. To avoid all mandate-related penalties, the offered coverage must provide minimum value and must be affordable.

Individual coverage HRAs can be used as a means to satisfy ACA's employer mandate. An employer could choose to offer such HRAs to all eligible employees or to a subset of eligible employees (subject to compliance with the class rules), provided that at least 95 percent of the employer's full-time employees receives a qualifying offer of coverage (of some type). If all eligible employees are offered coverage under an individual coverage HRA, then the employer would not have to (and actually could not) maintain a traditional group health plan for employees. Provided that the reimbursement available under the HRA was sufficient to make self-only coverage under a silver-level individual policy on the exchange affordable,[2] the employer's mandate-related responsibility would be satisfied. Such a plan design should minimize

2 For this purpose, affordability generally means that the annual premium for a self-only silver-level policy does not exceed the sum of (a) the amount of the available employer-funded HRA reimbursement, plus (b) 9.856 percent of the employee's household income. (The 9.856 percent factor is adjusted annually for changes in the cost of living.) The Health and Human Services Administration is expected to provide resources to assist individuals offered an individual coverage HRA with determining whether the individual coverage HRA is considered affordable for ACA and premium tax credit purposes. The U.S. Treasury Department and the Internal Revenue Service are also expected to provide affordability safe harbors, as well as other methods intended to reduce burdens and provide more predictability regarding the use of individual coverage HRAs as a means to satisfy ACA's employer mandate.

the time an employer has to devote to plan design each year (in advance of open enrollment), provide certainty to the employer's maximum outlay per employee per year, and eliminate rate increase and other uncertainties that are a regular part of annual insurance renewals. With individual coverage HRAs, employees find their own coverage and then seek reimbursement for premiums (and other covered expenses) from the HRA. An employer opting for this design likely would engage the services of a competent third-party administrator that would handle notice, enrollment, substantiation, and reimbursement issues.

Conclusions

Although individual coverage HRAs are subject to numerous requirements and limitation (some of which are summarized here), in the right situation, they may offer a simplified means for an employer to satisfy the employer mandate provisions of the ACA. For small employers not subject to the ACA employer mandate, and/or for employees who are not considered full-time for ACA purposes, individual coverage HRAs may be a viable means for an employer to provide some level of employer-provided health benefits, without concern about the restrictions imposed on stand-alone HRAs by prior agency guidance.

If you think individual coverage HRAs may be right for some portion of your business, please contact a member of the Bond Employee Benefits and Executive Compensation practice group for more details, including details on related tax and ERISA issues.