

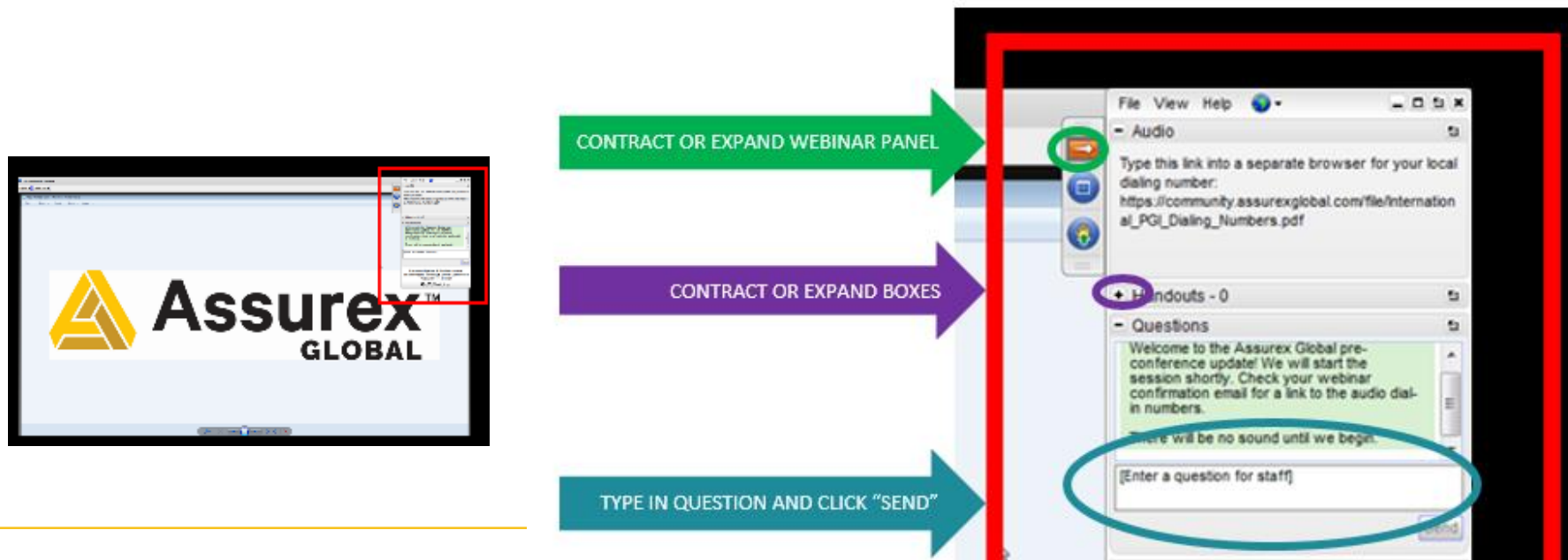
2019

New HRA Regulations Released

Presented by Benefit Comply

New HRA Regulations Released

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
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Health Reimbursement Arrangements (HRAs)

Health Reimbursement Arrangements (HRAs)

- HRA Basics
 - HRAs must be funded solely with employer contributions (no employee contributions)
 - There are never actually any “funds” in an HRA
 - HRA reimbursement generally permitted for §213(d) qualifying medical expenses
 - Varies based on plan design and type of HRA
 - HRAs are a form of a self-funded group health plan subject to:
 - COBRA
 - ERISA (e.g. requires a plan document, SPD and SBC)
 - §105(h) non-discrimination rules
 - Partners, S-Corp 2% + owners, and sole proprietors are ineligible to participate

Health Reimbursement Arrangements (HRAs)

- Current Types of HRAs
 - HRA Integrated with a Group Medical Plan
 - Employer must offer a group medical plan and the HRA
 - Individuals must be enrolled in an integrated group medical plan to participate in the HRA
 - Prohibited from reimbursing individual health insurance premiums
 - Limited-Purpose HRA
 - Designed to reimburse only limited-scope benefits such as dental or vision
 - Sometimes referred to as an HRA that only reimburses excepted benefits
 - Retiree-Only HRA
 - Qualified Small Employer HRA (QSEHRA)
 - Small employers (less than 50 FTEs) who do NOT offer a group medical plan
 - Permitted to reimburse individual health insurance and Medicare premiums

Health Reimbursement Arrangements (HRAs)

- NEW HRA OPTIONS – Effective Jan. 2020
 - Excepted Benefit HRA (EBHRA)
 - Limited stand-alone HRA
 - Individual Coverage HRA (ICHRA)
 - HRA integrated with individual health coverage or Medicare that can also be set up to reimburse other §213(d) qualifying medical expenses

New HRA Options

Excepted Benefit HRA (EBHRA)

- Excepted Benefit HRA (EBHRA)
 - Stand-alone HRA that qualifies as an excepted benefit
 - Available to reimburse all §213(d) expenses (other than premiums), not just excepted benefits (i.e. dental and vision)
 - Don't confuse this option with an HRA that reimburses only excepted benefits
 - Maximum benefit cannot exceed \$1,800 for the plan year (indexed annually)
 - Stand-alone
 - Employee and dependents do not need to be covered by a group medical plan (integration not required)
 - Employees must be eligible for (but not necessarily enrolled in) both the employer's group medical plan and the HRA
 - Very similar to a general-purpose health FSA, except:
 - Funded solely by employer contributions
 - Higher annual employer contribution limit (\$1800 rather than \$500)
 - Allows for unlimited carryover and spend-down provisions (health FSAs allows for a \$500 carryover)

Individual Coverage HRA (ICHRA)

- Individual Coverage HRA (ICHRA) Basics
 - Employer Contributions
 - Funded solely by employer contributions (tax-favored)
 - Contributions can vary by age up to a 3:1 difference and by number of dependents in the family coverage
 - Reimbursement
 - Employees can pay for individual health insurance (on and off-Exchange coverage)
 - ICHRA can be set up to reimburse other §213(d) expenses (but this is not required)
 - May be used to reimburse premiums for Medicare and Medicare supplemental health insurance (Medigap)
 - Employees can pay their portion of the individual premium pre-tax through a §125 plan for coverage purchased off the Exchange
 - This option is available only alongside the ICHRA

Individual Coverage HRA (ICHRA)

- Individual Coverage HRA (ICHRA) Basics - Continued
 - Eligibility
 - Employee/dependents must be covered by an individual plan to participate
 - Can be integrated with:
 - Individual health insurance coverage (Exchange or non-Exchange coverage), including student health insurance, catastrophic coverage, and “grandmothered” or grandfathered individual coverage; or
 - Medicare Part A and B or Part C
 - Cannot be integrated with short-term, limited-duration insurance (STLDI), coverage that consists solely of excepted benefits, TRICARE, or healthcare sharing ministries
 - ICHRA must be offered by class of employee
 - IMPORTANT RULE - Employees in a class cannot be offered both the ICHRA and traditional group medical coverage
 - Coverage must be offered on the same terms for all employees in a class

Individual Coverage HRA (ICHRA)

- Individual Coverage HRA (ICHRA)
 - Must be offered by class of employee
 - Full-time employees (as defined under either §105(h) or §4980H);
 - Part-time employees (as defined under either §105(h) or §4980H);
 - Seasonal employees (as defined under either §105(h) or §4980H);
 - Salaried workers;
 - Non-salaried workers (hourly workers);
 - Employees working in the same geographic location (insurance rating area, state, or multi-state region);
 - Employees covered by a collective bargaining agreement;
 - Employees who have not satisfied a waiting period;
 - Non-resident aliens with no U.S.-based income;
 - Some temporary employees of staffing firms
 - Can combine classes (e.g. hourly employees in a particular rating area)
 - Classes can differ for different EINs within a controlled group or affiliated service group

Individual Coverage HRA (ICHRA)

- Individual Coverage HRA (ICHRA)
 - Minimum class size requirement if differentiating between full-time/part-time, hourly/salaried, rating area or a combination of these classes

Employer Size	Eligible Employees in Class
<100	10
100 - 200	10% of employees
200+	20

- Example – Employer with 500 employees - ICHRA offered to all hourly employees in one rating area, but the employer only has 15 eligible hourly employees working in that rating area – this would not meet the minimum class size requirement

Individual Coverage HRA (ICHRA)

- ICHRA Other Rules
 - Substantiation - Participants must confirm enrollment in individual health coverage annually as well as each time a request is made for HRA reimbursement
 - Simply collecting an attestation for purposes of the annual and ongoing coverage substantiation is adequate
 - A model attestation form provided by the agencies can be found here – <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/Downloads/HRA-Model-Attestations-PDF.pdf>
 - Alternatively, the employer could require a third-party document (e.g. carrier list of enrollees); or for the ongoing substantiation requirement, direct payment of insurance premiums would be considered adequate substantiation
 - Participants must be able to opt-out and waive any future reimbursements
 - Enrollment in the HRA causes ineligibility for a premium tax credit (PTC) when purchasing individual health insurance through a public Exchange
 - If the HRA provides minimum value and is affordable, an eligible participant is ineligible for a PTC even if the individual opts out of coverage

Individual Coverage HRA (ICHRA)

- ICHRA Notice Requirements
 - Must be provided 90 days before the beginning of each plan year or those who become eligible later, no later than the effective date of coverage
 - Must describe the ICHRA, including the following items:
 - Eligibility to participate in the HRA (i.e. integration with individual health coverage or Medicare)
 - Maximum dollar amounts available
 - Expenses eligible for reimbursement
 - Substantiation requirements
 - Ability to opt-out
 - Interaction with and eligibility for premium tax credits
 - Clarification that the individual health coverage is not subject to ERISA
 - Employer contact information for questions
 - Model notice - <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/Downloads/HRA-Model-Notice-PDF.pdf>

Individual Coverage HRA (ICHRA)

- ACA Employer Mandate and Premium Tax Credit Issues
 - What we know from the final ICHRA regulations
 - ICHRA will be an offer of minimum essential coverage (MEC) for §4980H(a)
 - Coverage that is “affordable” will also be deemed to provide minimum value
 - Affordability will be based on total premium for lowest cost silver plan minus what employer contributes to the HRA
 - Still waiting on clarification from the IRS
 - IRS requested comments via Notice 2018-88 on exactly how to determine affordability for employers (§4980H(b)) and how to apply benefit nondiscrimination rules (e.g. §105(h))
 - Proposed safe harbor would use the lowest cost silver plan based on where the employee works rather than where the employee resides
 - IRS indicated the employer affordability safe harbors would likely still apply (i.e. FPL, rate of pay or Form W-2)
 - IRS suggested there might be a safe harbor to make it easier to deal with rates that vary by age

Individual Coverage HRA (ICHRA)

- Medicare Secondary Payer (MSP) Considerations
 - Important Guidance – Offering an ICHRA to Medicare-eligible employees is NOT a violation of the MSP rule against incenting employees to take Medicare
 - ICHRA may be integrated with Medicare, even when employers are subject to MSP rules (20 or more employees)
 - ICHRA must be offered on the same terms to all employees within a “class” of employees, regardless of Medicare eligibility or entitlement
 - Same amount available to all employees in the class
 - CANNOT BE OFFERED SOLELY TO MEDICARE-ELIGIBLE INDIVIDUALS
 - To avoid violating MSP rules, ICHRA may NOT limit reimbursement only to expenses not covered by Medicare
 - ICHRA that also reimburses §213(d) expenses will generally pay primary to Medicare
 - ICHRAs are group health plans and trigger the quarterly mandatory section 111 reporting requirements
 - Usually handled by TPA or carrier

Individual Coverage HRA (ICHRA)

- HSA-Eligibility
 - An HRA that only reimburses individual health insurance premiums or excepted benefits will not prevent eligibility to contribute to an HSA
 - If the HRA is available to reimburse cost-sharing prior to meeting the HDHP minimum deductible, individuals enrolled will not be eligible to contribute to an HSA
- Non-Discrimination Rules
 - Any time an employer divides benefits by class, non-discrimination rules must be considered
 - §125 non-discrimination rules for benefits (fully-insured or self-insured) offered through a §125 cafeteria plan
 - §105(h) non-discrimination rules for self-insured health plans
 - Offering group health plan (GHP) to principally higher compensated employees and ICHRA to lower paid workers may make the GHP discriminatory under §105(h) or §125

Individual Coverage HRA (ICHRA)

- ERISA
 - ICHRA is subject to ERISA
 - Plan documentation, SPD, SBC and Form 5500 filing
 - The integrated individual health insurance is generally not subject to ERISA if certain criteria are met:
 - Participation is voluntary
 - Annual notice is provided indicating plans are not subject to ERISA
 - Reimbursement for non-group health insurance premiums is limited to individual health insurance coverage
 - No financial or other consideration received by employer
 - Employer is not involved in carrier selection and does not endorse any particular carriers
 - ICHRA must offer access to all individual plans available in the market where the employee lives
- COBRA
 - An ICHRA is subject to COBRA but the individual policy purchased by the employee is not
 - Employer would need to offer to continue HRA funding if participant elects COBRA
 - Losing HRA coverage due to failing to maintain individual coverage is not a qualifying event
 - Premium for ICHRA must be based on actual total expense to employer, not on “benefit” offered

Understanding the Individual Health Insurance Marketplace

Individual Coverage Enrollment

- Enrollment Opportunities
 - Open Enrollment
 - 2020 Open Enrollment Period runs from 11/1/2019 – 12/15/2019
 - Plans sold during Open Enrollment start January 1, 2020
 - Special Enrollment Events:
 - Change in household (marriage, divorce, acquisition of new dependent, death)
 - Change in residence (new zip-code or county, move to U.S., etc.)
 - Loss of health insurance (job-based, Medicare, individual coverage)
 - Others (leaving incarceration, U.S. citizenship, etc.)
 - Complex events (natural disaster, technical error, hospitalization)
 - Special enrollment effective dates
 - Depends on the event and selection date of qualified health plan
 - Generally either 1st of month following selection or 1st of the next month
 - Earlier in certain cases (date of birth, adoption, placement in foster care)

Individual Coverage

- Rating Areas
 - ICHRA allows classes of employees to be based on geographic location/rating area
 - Number of rating areas differ drastically by state
 - Delaware = 1; Minnesota = 9; Florida = 67
- Individual Coverage
 - Individual premium payments permitted on a pre-tax basis, if off-Exchange
 - Availability of off-Exchange products varies drastically by state
 - In some states certain plans are sold off-Exchange only
 - Other states have required all individual market plans be sold on Exchange (therefore there are no off-Exchange plans)

Employer Considerations

Employer Considerations

- Individual Health Insurance Market Considerations
 - Plan and carrier access
 - Plan costs compared to group health plan options
 - Rate change variability year over year
- Technology Requirements
 - Arranging for reimbursements for any carrier in any market with employees
 - Enrollment platform providing access to all individual plan options
- Employee Relations
 - Will employees see this option as less attractive than a group health plan?
 - Employer loss of any impact on plan costs

Comparing HRAs

Comparing HRAs

EMPLOYER ELIGIBILITY

HRA Integrated with a Group Medical Plan	Employers of any size who offer a group medical plan
Limited-Purpose HRA	Employers of any size
Retiree-Only HRA	Employers of any size
Qualified Small Employer HRA (QSEHRA)	Small employers (less than 50 FTEs) who do NOT offer a group medical plan
Excepted Benefit HRA (EBHRA)	Employers of any size who offer a group medical plan
Individual Coverage HRA (ICHRA)	Employers of any size

Comparing HRAs

EMPLOYEE ELIGIBILITY

HRA Integrated with a Group Medical Plan	Employees and family members who are ENROLLED in an integrated group medical plan
Limited-Purpose HRA	Depends upon the plan eligibility rules
Retiree-Only HRA	Retirees and family members who meet the plan eligibility rules
Qualified Small Employer HRA (QSEHRA)	Employees enrolled in minimum essential coverage
Excepted Benefit HRA (EBHRA)	Employees and family members who are ELIGIBLE for the employer's group medical plan
Individual Coverage HRA (ICHRA)	Employees and family members who are ENROLLED in an individual health plan or Medicare who are NOT eligible for the employer's group medical plan (if any)

Comparing HRAs

EMPLOYER CONTRIBUTIONS

HRA Integrated with a Group Medical Plan	Unlimited employer contributions
Limited-Purpose HRA	Unlimited employer contributions
Retiree-Only HRA	Unlimited employer contributions
Qualified Small Employer HRA (QSEHRA)	Maximum indexed annually Single coverage = \$5,150 (2019) Family coverage = \$10,450 (2019)
Excepted Benefit HRA (EBHRA)	Maximum indexed annually – \$1,800 (2020)
Individual Coverage HRA (ICHRA)	Unlimited employer contributions

Comparing HRAs

	REIMBURSEMENTS
HRA Integrated with a Group Medical Plan	§213(d) qualifying medical expenses for those enrolled in an integrated medical plan
Limited-Purpose HRA	Excepted benefits (e.g. limited-scope dental or vision)
Retiree-Only HRA	§213(d) qualifying medical expenses, including insurance premiums
Qualified Small Employer HRA (QSEHRA)	§213(d) qualifying medical expenses, including insurance premiums, of the employee and family members
Excepted Benefit HRA (EBHRA)	§213(d) qualifying medical expenses, but NOT insurance premiums other than for excepted benefits, STLDI and COBRA
Individual Coverage HRA (ICHRA)	§213(d) qualifying medical expenses, including insurance premiums for those enrolled in individual health coverage or Medicare

Comparing HRAs

NON-DISCRIMINATION

HRA Integrated with a Group Medical Plan	Subject to §105(h) rules, which prohibit favoring highly compensated individuals
Limited-Purpose HRA	Subject to §105(h) rules, which prohibit favoring highly compensated individuals
Retiree-Only HRA	Subject to §105(h) rules, which prohibit favoring highly compensated individuals
Qualified Small Employer HRA (QSEHRA)	Must be provided (not just offered) uniformly to all employees within a controlled group, except: (i) those with less than 90 days of service; (ii) those under age 25; (iii) part-time or seasonal employees; (iv) non-participating employees covered by a collective bargaining agreement; and (v) nonresident aliens not paid with U.S.-sourced income
Excepted Benefit HRA (EBHRA)	Subject to §105(h) rules, which prohibit favoring highly compensated individuals
Individual Coverage HRA (ICHRA)	Must be offered on the same terms and conditions to all employees within specified classes except for differentiations by age (3:1) or number of dependents eligible for reimbursement

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