

PROPOSED RULES PERMIT INTEGRATION OF HRAs AND INDIVIDUAL HEALTH INSURANCE

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The Departments of Labor, Treasury, and Health and Human Services jointly issued proposed regulations that would expand the use of health reimbursement arrangements (“HRAs”), in part by allowing employees to use HRAs to purchase individual health insurance policies.

The proposed effective date for these regulations, when finalized, would be January 1, 2020. HRAs are a type of account based group health plan that are exclusively funded with employer dollars, and may be used by employees to pay for certain eligible medical expenses. Although HRAs have been around for many years, under the Patient Protection and Affordable Care Act (“ACA”) the use of HRAs were somewhat curtailed. This is due to the ACA’s requirement for group health plans (including HRAs) to comply with certain rules, such as providing first dollar coverage to preventive care services and a prohibition on annual dollar limits. These ACA rules are generally incompatible with account based plans that cease providing coverage once the account balance has been exhausted. To work around these issues, sub-regulatory guidance had been issued to permit HRAs so long as they were integrated with other group health plans that fully complied with the ACA rules.

However, under this existing guidance, HRAs were expressly not permitted to integrate with individual health coverage. These new proposed regulations would significantly expand the use of HRAs by allowing individuals to purchase individual health insurance policies, or allow employers to reimburse individual policies that the employees purchase on their own. Under these new proposed rules, to be reimbursed for individual coverage through an HRA, the participant would need to show proof that he or she purchased individual health coverage (that was not an excepted benefit). In addition to allowing employees to purchase individual health insurance with HRA funds, these proposed regulations set forth conditions under which certain HRAs would be considered limited excepted benefits. This alternative HRA design would be subject to an annual reimbursement cap of \$1,800 and would only permit the reimbursement of certain types of benefits, such as standalone dental insurance or COBRA coverage. Employers offering excepted benefit HRAs would be required to offer them in conjunction with standard group health benefits. In contrast, employers offering HRAs that would be compatible with individual health policies could not also provide employees with an option for standard group coverage.

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The regulations also propose rules regarding premium tax credit eligibility for HRAs integrated with individual coverage, clarify that the individual coverage purchase with the HRA funds is not covered by ERISA, and provide special enrollment period in the individual market for individuals who gain access to an HRA integrated with individual coverage. Employers wishing to provide benefits through an HRA have had to navigate the challenges of these ever changing rules. Likely, additional guidance will be issued between now and when these proposed regulations are scheduled to become effective. Stay tuned.