

HEALTH REIMBURSEMENT ARRANGEMENTS AND WAIVERS

Employee Benefits Alert
November 19, 2010

Attorneys

Richard Kaiser

Deadline: December 1, 2010 for Plan Years Beginning January 1, 2011

Practices & Industries

Employee Benefits

Background

Under the Patient Protection and Affordable Health Care Act (PPACA), a group health plan's ability to impose annual limits on essential health benefits is restricted for plan years beginning before January 1, 2014 and prohibited altogether for plan years beginning on or after January 1, 2014.

For plan years that begin before January 1, 2014 the annual dollar limit on essential health benefits cannot be less than:

- \$750,000 for plan years beginning on or after September 23, 2010, but before September 23, 2011
- \$1,250,000 for plan years beginning on or after September 23, 2011, but before September 23, 2012
- \$2,000,000 for plan years beginning on or after September 23, 2012, but before January 1, 2014

For calendar year plans, the effective date of the \$750,000 restricted limit is January 1, 2011.

NOTE: While this alert refers to Health Reimbursement Arrangements (HRAs), any type of so-called "105(h)" plan (other than a salary-reduction only health FSA) that sets an annual limit on reimbursements is in the crosshairs of this law.

How does this annual dollar limit apply to Health Reimbursement Arrangements?

Because HRAs limit reimbursements to the amount standing to the credit of a participant's account as of a given date, HRAs that reimburse essential health benefits impose annual dollar limits by their very design. Virtually every HRA design we have seen has an annual reimbursement limit that is well below the limits



HEALTH REIMBURSEMENT ARRANGEMENTS AND WAIVERS

prescribed by PPACA.

Are any HRAs exempt from the new annual dollar limits?

The following types of HRAs are not subject to the restriction on annual dollar limits:

- HRAs that cover fewer than two current employees as of the first day of the plan year (e.g., retiree HRAs).
- Limited-Scope HRAs (e.g., HRAs that provide coverage that is limited to dental and vision expenses).
- HRAs with an annual reimbursement limit less than or equal to \$500 and no carryovers, provided the employer makes major medical coverage available to all employees who are eligible for the HRA.
- HRAs that are “integrated” with a group health plan that is subject to the annual limit rules. For example, while it is not clear, it would appear that an HRA is integrated with a major medical plan if the HRA is available only to employees who are enrolled in the medical plan. Unfortunately, there is no clear guidance as to when an HRA is “integrated” with a major medical plan.
- HRAs that qualify as flexible spending arrangements. To qualify as a flexible spending arrangement, the HRA must meet an important requirement: The maximum amount of reimbursement that is reasonably available to a participant under the HRA for a year is less than 500 percent of the value of the HRA coverage. HRAs that have modest account balances will typically meet this requirement. Employers may use the COBRA premium as a proxy for the value of the coverage.

May an employer ask the government to waive this requirement for its HRA?

Yes, PPACA provides that a waiver of the annual limit rules is available in certain cases. The waiver process is designed for cases in which compliance with the restricted annual limits “would result in a significant decrease in access to benefits” or “would significantly increase premiums.” A waiver application must be submitted not less than 30 days before the beginning of the plan year. **For calendar year plans, the application must be submitted by December 1, 2010.**

Will there be any further guidance issued before December 1?

Hopefully, the responsible government agencies will provide further guidance exempting most common types of HRAs even if they are of the “stand-alone” variety; however, there is no guidance to date and it is not clear whether guidance will be provided by December 1, 2010, the due date of the application for calendar year plans.

Should I apply for a waiver?

If your HRA is not an exempt HRA (or you are not sure whether it is exempt), you should consider filing a waiver application.

HEALTH REIMBURSEMENT ARRANGEMENTS AND WAIVERS

How do I apply for a waiver?

A waiver may be obtained by filing an application with the Department of Health and Human Services.

