

Insights

Proposed Regulations Allowing for Expanded Usage of Health Reimbursement Arrangements (HRAs) - Another Step In President Trump's Focus on Health Care Reform

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A trifecta federal agency approach to expansion efforts related to health reimbursement arrangements ("HRAs") occurred on October 29, 2018. The Departments of Treasury, Health and Human Services, and Labor (collectively, the "Departments") jointly announced proposed HRA regulations, effective for plan years beginning on or after January 1, 2020, that can be found [here](#). The Departments prepared proposed regulations as a response to President Trump's Executive Order 13813 ("Executive Order") issued on October 12, 2017, which prioritized three areas for health care insurance improvement for employers and employees. Those areas include: association health plans; short-term limited duration insurance, and health reimbursement arrangements. The HRA proposed regulations are the third installment of guidance with respect to the Executive Order.

The Departments request comments from employers and others as to whether the proposed regulations provide the flexibility needed for employers, especially small employers, to utilize HRAs as a funding mechanism for employees to receive reimbursement of insurance purchased on the individual market. HRAs current restrictive usage led many employers to find HRAs ineffective in providing an effective alternative to offering employees funding for healthcare coverage. One of the major limitations addressed in the new regulations is the prohibition on HRAs to reimburse employees for coverage purchased on the individual market.

The proposed regulations provide that employers may provide reimbursement to employees through HRAs and not have such reimbursement considered discriminatory or noncompliant with certain other federal laws related to group health plans if certain requirements are met. Specifically the following six criteria must be satisfied by employers with respect to employees who receive reimbursements through an HRA for individual health care coverage:

- Enrollment in individual health care insurance coverage must occur
- The employer may not offer a traditional group health plan to the same class of employees who are eligible for the HRA reimbursement
- All employees within the HRA eligible class must be offered the same terms of reimbursement coverage
- Employees must be permitted to opt out of the HRA coverage

- The employer must have reasonable procedures for verifying and substantiating the purchase of individual health insurance
- Notices must be provided to employees regarding the HRA availability

Note that there are limits to the amount the HRA can reimburse. Currently the limit is \$1,800 per year which will be indexed to inflation for future years. There are also other requirements designed to prohibit adverse selection in the individual market which should also help keep prices competitive. The stated goal of the Trump administration is to help employers provide benefits to employees that the employers might not otherwise be able to afford while not requiring the employers to become insurance experts and permitting them to focus on their core businesses instead.

To review the News Release, Fact Sheet and see a copy of the proposed regulations, click on the applicable link below:

News Release: <https://www.dol.gov/newsroom/releases/ebsa/ebsa20181023>

Proposed Regulation: <https://www.federalregister.gov/documents/2018/10/29/2018-23183/health-reimbursement-arrangements-and-other-account-based-group-health-plans>

Fact Sheet: <https://www.dol.gov/sites/dolgov/files/OPA/factsheets/wh-hra-factsheet.pdf>