

Federal Government's Proposed Regulations on HRAs.

On October 29, 2018, the U.S. Departments of the Treasury, Health & Human Services, and Labor jointly issued proposed regulations expanding permitted uses for health reimbursement arrangements (“HRAs”). An HRA is a type of group health plan that allows employers to fund medical care expenses for their employees on a pre-tax basis. Employer contributions fund HRAs, and can only be used to reimburse an employee for the medical care expenses (as defined by the IRS) of the employee, the employee’s spouse, children, or tax dependents. HRAs qualify for pre-tax treatment because they are considered group health plans, and therefore have historically not been able to be used to pay premiums for coverage in the individual market.

If the proposed regulations are finalized, employers will be allowed (starting January 1, 2020) to establish two new types of HRAs that were not previously allowed under the ACA: Premium Reimbursement HRAs and Excepted Benefit HRAs.

Premium Reimbursement HRAs would provide for reimbursements for premiums for individual health insurance. Employers would need reasonable procedures to verify that an individual is enrolled, such as attestation by the employee or documentation from a third-party. An employer could not offer employees a choice of either this HRA or a traditional group health plan. Employers could divide employees into separate classes and offer some classes an HRA and others a traditional group health plan as long as the HRA is offered according to the same terms and conditions to all employees within such class. The proposed regulations define these allowable classes (e.g. full-time, part-time, seasonal, union, primary employment site), but classes based on hourly and salaried employees are not permitted.

Excepted Benefit HRAs could only be *offered* to participants who are also offered coverage under a traditional group health plan. Employees may still choose to enroll in this type of HRA even if they do not enroll in the group health plan. Employers would be able to fund this HRA up to \$1,800 per year, with carryover amounts into the future. This HRA would not be available to reimburse premiums paid for individual or group health insurance, or Medicare. The HRA, however, can be used to reimburse premiums for excepted benefits (such as dental or vision coverage). Also note, this HRA would also be considered an excepted benefit, which is not subject to the ACA’s prohibition on annual or lifetime limits.

Employers wishing to establish the HRAs set forth by the proposed regulations will not be able to do so until at least January 1, 2020. Existing rules under the ACA still apply, and they impose substantial penalties on most employers using HRAs to reimburse employees for individual health insurance premiums. There are also multiple requirements, exceptions and considerations to account for in establishing these contemplated HRAs, and employers should confer with legal counsel and other professionals throughout that process.