Agencies Release Guidance on HRAs, Health FSAs and Cafeteria Plans

Provided by Benefit Administration Company, LLC.

Quick Facts

- HRAs cannot be integrated with individual coverage to satisfy market reforms.
- Only cafeteria plan health FSAs are exempt from the annual limit prohibition.
- EAPs are excepted benefits if they do not provide significant medical benefits.
- A transition rule is available for non-calendar year cafeteria plans

A group health plan, including an HRA, used to purchase coverage on the individual market cannot be integrated with that individual market coverage for purposes of the ACA's annual dollar limitation or preventive services requirements.

On Sept. 13, 2013, the Internal Revenue Service (IRS) and the Department of Labor (DOL) issued technical guidance on how certain market reforms under the Affordable Care Act (ACA) apply to health reimbursement arrangements (HRAs), health flexible spending accounts (FSAs) and other similar arrangements.

This guidance is contained in [IRS Notice 2013-54]() and [DOL Technical Release 2013-03](). The Department of Health and Human Services (HHS) is also issuing guidance to show that it agrees with the IRS' and DOL's interpretation.

The guidance applies for plan years beginning on or after **Jan. 1, 2014**, but can be applied for all prior periods.

Annual Limits and Preventive Care

The ACA requires non-grandfathered group health plans to cover certain preventive care services without imposing any cost sharing. For plan years beginning on or after Jan. 1, 2014, the ACA prohibits group health plans from placing annual dollar limits on the coverage of essential health benefits.

Prior guidance provided that an HRA integrated with other group health coverage is not required to satisfy the annual limit restrictions if the other coverage alone satisfies the ACA's annual limit restrictions. The latest guidance includes the following points:

- An HRA will comply with the preventive care services requirements if the group health plan with which the HRA is integrated complies with the preventive care services requirements.

- A group health plan, including an HRA, used to purchase coverage on the individual market cannot be integrated with that individual market coverage for purposes of the ACA's annual dollar limitation or preventive care services requirements. For example, a group health plan, such as an employer payment plan, that reimburses employees for an employee's substantiated individual insurance policy premiums will fail to satisfy the market reforms for group health plans because the plan:

    - Imposes an annual limit up to the cost of the individual market coverage purchased through the arrangement; and

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- Cannot be integrated with any individual health insurance policy purchased under the arrangement.

- Only health FSAs that are offered through a Code Section 125 plan (or cafeteria plan) are exempt from the ACA's annual limit prohibition. The DOL intends to amend its annual limit regulations to clarify this exemption, applicable Sept. 13, 2013. (Note that these health FSAs must comply with the annual $2,500 limit on health FSA salary reduction contributions.)

- Health FSAs that do not qualify as excepted benefits will fail to meet the ACA's preventive care services requirements because they are not integrated with group health plans.

- Unused amounts that were credited to an HRA while the HRA was integrated with other group health coverage may be used to reimburse medical expenses after an employee ceases to be covered by the other group health coverage without causing the HRA to fail to comply with the ACA's requirements on annual limits and preventive care.

- In general, an integrated HRA violates the ACA's annual limit prohibition if the group health coverage does not cover a category of essential health benefits and the HRA is available to cover that category of benefits and limits the coverage to the HRA's maximum benefit. However, if the group health coverage provides minimum value, there is no violation.

HRAs—Two Integration Methods
The IRS' and DOL's guidance includes two ways for an HRA to be considered integrated with a group health plan for purposes of the annual dollar prohibition and the preventive care services requirements. Under either method, the HRA and the other group coverage are not required to have the same plan sponsor or the same plan document, or to file a single Form 5500 (if applicable).

Under both methods, an employee must be permitted to permanently opt out of and waive future reimbursements from the HRA at least annually. This opt-out feature is required because the HRA's benefits generally will constitute minimum essential coverage and would disqualify an individual from claiming the ACA's premium tax subsidy.

Employee Assistance Programs (EAPs)
Benefits under an EAP are considered to be excepted benefits that are not subject to the ACA's market reforms, but only if the program does not provide significant benefits in the nature of medical care or treatment.

Premium Tax Subsidy
For purposes of the premium tax subsidy, the affordability and minimum value requirements do not apply if an employee enrolls in any employer-sponsored minimum essential coverage, including coverage provided through a cafeteria plan, an employer payment plan, a health FSA or an HRA, but only if the coverage does not consist solely of excepted benefits. If an employee enrolls in any employer-sponsored minimum essential coverage, he or she is ineligible for the ACA's premium tax subsidy.

An HRA that has fewer than two participants who are current employees on the first day of the play year (for example, a retiree-only HRA) is also considered minimum essential coverage. As a result, a retiree covered by a stand-alone HRA for any month will not be eligible for a premium tax subsidy for that month.

Cafeteria Plans
Beginning in 2014, individual coverage through an Exchange cannot be reimbursed or paid for under a cafeteria plan. For cafeteria plans that as of Sept. 13, 2013 operate on a plan year other than a calendar year, this restriction will not apply before the first plan year that begins after Dec. 31, 2013. However, individuals may not claim a premium tax subsidy for any month in which they are covered by an individual plan purchased through an Exchange as a benefit under a cafeteria plan.