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Proposed Regulations Exponentially Expand the Use of HRAs

Health Reimbursement Accounts (HRAs) are employer funded, account-based health plans which, by design, reimburse up to a fixed dollar amount of medical expenses. The Affordable Care Act (ACA) has severely limited their use for various reasons, including the requirement that group health plans not impose an annual and/or lifetime dollar limit on the payment of essential health benefits as well as the requirement for first dollar coverage of preventive services. Under current guidance, HRAs can be offered by employers to employees when they are integrated with another group health plan that complies with the ACA rules, but they cannot be integrated with individual policies. Employers can also offer HRAs to retirees, because retiree plans are exempt from ACA rules.

Earlier this week, the IRS, DOL and HHS proposed lengthy regulations that would allow employers to offer HRAs in two additional circumstances. Briefly, under these proposed rules:

1. HRAs could be integrated with individual health insurance coverage, so employers could offer an HRA to assist employees in paying for their individual coverage.

   - An employer would not be able to offer the same class of employees a choice between a major medical group plan or an HRA integrated with an individual policy – the HRA option can only be offered if no major medical group health plan is offered to that class of employees.
   - The HRA must be offered on the same terms to all employees in the same class.
   - Employers would have to substantiate enrollment in eligible individual health coverage for each month an employee is covered by the HRA.
   - Written notice of the effect of the HRA on the premium tax credit must be provided, and employees must be able to opt out of the HRA at least annually to preserve their eligibility for a premium tax credit through the Marketplace.

2. Employers could offer an HRA of up to $1,800 per year to employees as an excepted benefit.

   - As is the case with health care FSAs, these HRAs can only be offered to employees who are eligible to participate in the employer's major medical group health plan (but an employee can elect the HRA even if s/he waives the other group health coverage).
   - The HRA cannot reimburse premiums for individual health insurance coverage or Medicare (except for excepted benefits, short term policies, and COBRA premiums).
   - The HRA must be available on the same terms to similarly situated employees.

These new rules are proposed to apply for plan years beginning on and after January 1, 2020, and comments are requested by December 28, 2018. Look for additional blog postings in the future drilling down on each of the two newly proposed HRAs.