



Eye On Washington Health Care Reform Update



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21st Century Cures Act Permits New HRA Benefit Plans for Small Employers

On December 13, 2016, President Obama signed legislation (HR 34 – the [21st Century Cures Act, or the Act](#)) that will allow small employers to offer stand-alone health reimbursement arrangements (HRAs) to employees that have purchased a health plan in the individual market, as long as certain conditions are met. The law is effective January 1, 2017.

Background

Under the Affordable Care Act (ACA), employers that do not meet the definition of an Applicable Large Employer (ALE) are not required to either provide health plans that meet certain requirements to their full-time employees or pay a penalty to the Internal Revenue Service (IRS). Many employers that are not ALEs have wanted to offer limited health benefits to their employees, but have generally been prohibited from offering such benefits, including through HRAs that are not integrated with other employer coverage, and that do not meet ACA coverage and cost-sharing requirements. Employers faced significant IRS penalties of \$100 per “affected individual,” per day, for offering HRAs to cover health insurance costs for the purchase of plans on the individual market.

Under the 21st Century Cures Act, eligible small employers can now offer Qualified Small Employer Health Reimbursement Arrangements (QSEHRAs) without being subject to these penalties. The Act stipulates that a QSEHRA is not a group health plan under the Internal Revenue Code or ERISA and is not subject to ACA coverage and cost-sharing requirements. Benefits under a QSEHRA are not subject to income or employment taxes. Provision of a QSEHRA may affect the amount of an individual’s premium assistance tax credit for purchase of insurance on a health insurance Exchange/Marketplace.

The following conditions must be met:

Eligible Small Employers

To be eligible, employers must:

- Not be an ALE (i.e., must have an average of fewer than 50 full-time and full-time equivalent employees, excluding seasonal workers, in the prior calendar year); and
- Offer no group health plan to any of its employees.

Eligible Employees

The QSEHRA must generally be offered to all employees, except those who are:

- Part-time;
- Seasonal;
- Under the age of 25;
- Within the first 90 days of service with the employer; or
- Part of a collective bargaining agreement.

QSEHRA Requirements

- Funds in a QSEHRA can generally be used to pay for medical expenses of the employee and their family members and reimburse health insurance premiums, provided the following conditions are met:
- The employee provides proof of coverage;
- The QSEHRA is funded solely by the employer without salary reduction contributions;
- Annual payments and reimbursements from the QSEHRA are limited to no more than \$4,950 for individuals and \$10,000 for QSEHRAs that also reimburse the employee’s family members. These limits will be prorated for employees who are not covered by a QSEHRA for the entire year, and will be adjusted annually for inflation; and,
- The QSEHRA is offered on the same terms to all eligible employees. Variation in benefits is permitted based on the variation in the price of a policy in the relevant individual health insurance market, based on the age of the employee and any eligible family members, if applicable, and the number of family members covered under such an arrangement.

NOTE: If an employee does not have minimum essential coverage for a month, any payments or reimbursements under a QSEHRA for that month are taxable to the employee.



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Notice Requirements

At least 90 days before each plan year (or, for new hires, on the first date the employee is eligible), a small employer offering a QSEHRA must provide a notice to employees that includes a statement:

- Of the amount of the employee's permitted benefit under the arrangement for the year;
- That the eligible employee should provide information about that amount to any health insurance Exchange/Marketplace to which the employee applies for advance payment of the premium assistance tax credit; and
- That if the employee is not covered under minimum essential coverage for any month, the employee may be subject to tax under Code Section 5000A for such month, and reimbursements may be included in gross income.

Failure to provide such notices in a timely manner could subject the employer to a \$50 penalty for each employee, up to \$2,500 annually. As transition relief, no penalty will apply for notices required for 2017 if such notice is so provided not later than 90 days after the date of enactment; i.e., March 13, 2017.

W-2 Reporting Required

Employers will be required to report the value of any QSEHRA benefit on the employee's Form W-2, beginning in 2017 (i.e., Forms W-2 issued in January 2018 for 2017). The IRS will need to issue guidance as to how to report such amounts, but presumably a new code would be added to separately report such benefit amounts in Box 12 of Form W-2.

Compliance Recommendations

Small employers that wish to offer QSEHRAs and would like to learn more about requirements, limitations, and notice obligations should visit <https://www.congress.gov/114/bills/hr34/BILLS-114hr34enr.pdf>. Employers should also watch for related guidance from the IRS.

ADP Compliance Resources

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