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Hip, Hip, HRA? New Rules Regarding Account-Based Group Health Plans Could Have Some Employers Cheering

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On June 13, the Departments of Treasury, Labor, and Health and Human Services (the "Departments") issued final regulations (the "Final Regulations") regarding health reimbursement arrangements ("HRAs") and other account-based group health plans, along with model attestations, notices, and frequently asked questions. The new rules potentially make it easier for employers to provide health coverage to their employees through HRAs. In the wake of the new rules, however, employers that currently use a traditional group plan model will likely have many questions about whether their workforce will be willing to adapt to a solely account-based model and the logistics involved in making such a move. Below, we summarize the Final Regulations and discuss some of the issues involved.

Background

The Final Regulations are the last outstanding item issued in response to President Trump's Executive Order No. 13813 ("Promoting Healthcare Choice and Competition Across the United States") (the "Executive Order"). The Executive Order directed the Departments to consider issuing sweeping new healthcare guidance in a stated effort to lower premium costs and increase choice in the individual health insurance market. One of the Executive Order's initiatives was expanding the use and availability of HRAs.

The Final Regulations create two new methods by which employees may use HRA dollars in conjunction with health insurance purchased on the individual market. The first method permits the use of HRA funds to purchase individual health insurance coverage or Medicare (thereby creating opportunities for "Individual Coverage HRAs" or "ICHRAs"). The second method creates a limited-dollar HRA that employees may use to pay for most out-of-pocket medical expenses ("Excepted Benefit HRAs" or "EBHRAs").

Individual Coverage HRAs

A. Integration Rules

Guidance previously issued by the Departments in 2013 provided that an HRA (or other employer-sponsored arrangement designed to pay for health coverage purchased in the individual market) for active employees had to be "integrated" with another group health plan to satisfy the Affordable Care Act's ("ACA's") market reform requirements. The stated legal rationale for this earlier guidance was that a stand-alone HRA or other similar arrangement for active employees would fail to satisfy two of the ACA's "market reform" provisions: the prohibition against annual dollar limits on essential health benefits; and the requirement to provide certain preventive services without cost-sharing. The Final Regulations permit an ICHRA to be integrated with certain qualifying *individual* health plan coverage or Medicare in order to satisfy the market reforms. In order to be "integrated" with individual market coverage/Medicare, the Final Regulations provide that the ICHRA must meet several conditions, described below.

1. Requirement that All Individuals Covered by the HRA Are Enrolled in Individual Health Insurance or Medicare Coverage

In order to be integrated with individual market health insurance coverage, any participant (regardless of whether a current or former employee) and dependent who can receive reimbursements from the ICHRA *must* be enrolled in individual market health insurance or Medicare coverage for each month that they are covered by the ICHRA. Substantiation of enrollment in such coverage is required (the substantiation requirements are discussed below).

2. Prohibition Against Offering Both an HRA Integrated with Individual Health Insurance Coverage and a Traditional Group Health Plan to the Same Class of Employees

Generally, an employer may not offer an ICHRA to a class of employees if the employer offers a "traditional group health plan" to the same class of employees. A "traditional group health plan" is defined as any group health plan *except* (i) an account-based health plan, and (ii) a plan that consists solely of excepted benefits. However, employers are permitted to create "classes" within their workforce, based on nine specified "classes" enumerated in the Final Regulations (e.g., full-time, part-time, salaried, non-salaried, etc.). If the employer offers an ICHRA to an employee in a given class, it must offer the ICHRA on the same terms to all employees in that class, but could offer a traditional group health plan to employees in a different class.