Views

Tread carefully on new HRA law allowing individual coverage reimbursements

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Included in the 21st Century Cures Act, is Section 18001, creating a new hybrid HRA entity called a Qualified Small Employer Health Reimbursement Arrangement (QSE HRA). This new form of HRA is designed to specifically allow non-ALE entities to resume paying for individual health insurance premiums for their employees. But the dance moves required to implement and use this new approach will create hazards for the employer or agent who doesn't carefully follow the rules.

Who can implement a QSE HRA? Only an employer who does not meet the definition of an applicable large employer under the ACA, and who does not offer coverage to its employees. In other words, the employer (including other employers who fall under common control or ownership) who averaged less than 50 FTEs during 2016 (or the entire prior calendar year). This definition, reinforcing the ACA's definitions and the calculations involved with determining large employer status, is preserved by the new legislation. Further, if they offer a group health plan to some of their employees (including management only), the employer is prohibited from adopting a QSE HRA unless they terminate their group health plan before the QSE HRA goes into effect.

What benefits are allowed? Under the legislation, the QSE HRA can pay or reimburse for any documented healthcare expense, as that term is defined in Section 213(d) of the Internal Revenue Code for its eligible employees who are covered on individual health insurance. What is not clear is if this new kind of HRA will have the same flexibility as existing HRAs or MERPs where an employer could limit what benefits would be paid (e.g. only health insurance premiums or deductibles).

Who pays? The employer must pay 100% of the cost of the benefit to be provided and cannot allow its employees to do pre-tax withholdings or use employee contributions on pre-tax or post-tax basis to pay for the QSE HRA's benefits.

Are there limits? Yes, the employer can contribute no more than $4,950 for an employee or $10,000 if family member expenses are also to be paid or reimbursed. That means that an employer could choose to set the amount to be paid to be less than those amounts on an annual (or if employed for a portion of the year, prorated) basis. (These limits are subject to being increased annually just as HSA and FSA amounts are adjusted based on inflation.)

Does the QSE HRA disqualify an individual or household from receiving premium. subsidies? No, despite many summaries of the bill indicating that QSE HRA benefits would deny eligibility for advanced payment tax credit (APTC), it is much more complicated than that. To understand the potential impact of any QSE HRA on premium subsidies, there will need to be a complex analysis of:

- Calculating the net cost of coverage for the employee (second-lowest silver plan minus monthly share of QSE HRA benefit)
- Determining if employer's benefit is affordable by comparing the net cost vs. 9.69% of the household income
- If affordable (net cost less than 9.69% of household income), employee's household is not eligible for APTC/premium subsidies
- If unaffordable, then the APTC amount would be reduced by the QSE HRA benefit, and the employee would still be responsible for paying their share of the cost of health insurance coverage.

For example, the Joneses purchase a silver plan that costs $1,500 per month for their family and qualify for a $1,100 APTC based on their household size and income (meaning that the family is responsible to pay $400 per month with after-tax dollars). If Mrs. Jones's employer sponsors a QSE HRA that reimburses up to $400 per month in healthcare expenses, then the family must report the QSE HRA benefit amount to the marketplace. If the net cost of coverage is still considered unaffordable (based on the analysis above), then the QSE HRA benefit would be deducted from the household's APTC and the Jones still responsible to pay $400 per month.

Are there any administrative requirements? Well, there are a few:
1) The plan can only pay (meaning before the expense is incurred) or reimburse for *documented* healthcare expenses, so the employer would need to both capture and retain those records.
2) The employer must provide a notice annually (90 days before the beginning of each year or when employees become eligible) that:
defines which employees are eligible (all full-time, non-seasonal employees who have worked at least 90 days) and the QSE HRA benefits;
inform the employee they must report the benefit amount to the marketplace or state-based exchange; and remind the employee that they are still subject to the individual penalty for months where they do not have coverage.
3) There are two specific reporting requirements on employers who sponsor the QSE HRA for their employees:
The benefit amount must be reported on the employee's W-2 (but the amount is not treated as taxable wages); and
The employer must also send a 1095-B form to each eligible employee and transmit the 1095-B data to the IRS on Form 1094-B.

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The very good news about the QSE HRA: the plans are not subject to federal continuation (COBRA) or other ERISA rules such as plan and SPD requirements.

In closing, an employer's decision to implement a QSE HRA will depend largely on their objectives and goals for providing health benefits for their employees. For some employers, the operational requirements and financial restrictions may be too much, while for others these will present the best possible avenue to provide their employees with assistance toward having coverage. Like nearly every opportunity to advise to our clients, there is no one right answer for everyone so weigh each client's needs accordingly.

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