Compliance Corner Webinar:

21st Century Cures Act
and the Impact of the Fiduciary Rule on Agents

March 16, 2017

QUESTIONS	REPLY
When you cannot offer group benefits to any employees? What about classing out employees by region (2 offices)? If the health plan offered doesn't allow for a network in the other office location?	It does not appear to be an exception for offering a group health plan for some employees, even if by class or region. As to the network question, it wouldn't apply since there wouldn't be a group health plan offered.
I thought the rule was coverage had to be minimum essential coverage? If so, MEC plans would be allowable, no?	The statute does not reference the minimum essential coverage standard, but simply coverage and specifically mentions Section 213(d) expenses. This remains an outstanding question for regulators to provide further guidance.
Can an employer limit this, for example, only for cost of individual coverage, or only for vision expenses for example, or is it any Section 213 (d) expenses?	The statute does not state clearly that the employer could limit the purpose for which the employee could use the QSE HRA funds. This remains an outstanding question for regulators to provide further guidance.
Can you have a different dollar amount for a two-person plan. i.e. single 4950 Family $10,000	The statute only references the employee only and family options (similar to HSA-qualified HDHPs) so it does not appear for the employer to set a different amount if only covering two persons. We may have more clarity once regulatory guidance is issued on QSE HRAs.
What if the employee is getting a subsidy? Any implications or regulations?	Employee's eligibility for a subsidy could be impacted by the QSE HRA. See the compliance corner slides for additional detail.
So this cannot be done if a single employee's annual health insurance premium is in excess of $4950?	A QSE HRA can be set up if single employee's annual health insurance premium exceeds the maximum amount – the remainder is the responsibility of the employee to pay with after-tax dollars.
So, does the employee add the QSE HRA amount to their estimated income for the Marketplace?	No, it is excluded from their income under the statute.
Does being eligible for a QSEHRA disqualify an individual from getting a Premium tax credit?	Employee's eligibility for a subsidy could be impacted by the QSE HRA. See the compliance corner slides for additional detail.

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Are self-employed individuals eligible for the QSE HRA? No group coverage.	Technically they could be, but it would be treated as imputed income to the self-employed individual. However it likely not necessary since self-employed individuals already have the right to deduct 100% of the cost of health insurance coverage for their household under the Internal Revenue Code. See https://www.irs.gov/uac/newsroom/dont-miss-the-health-insurance-deduction-if-youre-self-employed
Does this HRA make someone ineligible for an HSA contribution	Employee's eligibility for a subsidy could be impacted by the QSE HRA. See the compliance corner slides for additional detail.
Will QSE HRA amount cause someone who is receiving a subsidy to then receive less of a subsidy or no subsidy?	Employee's eligibility for a subsidy could be impacted by the QSE HRA. See the compliance corner slides for additional detail.
Can employer offer only Medicare HRA while employees under age 65 on group plan?	Yes, under IRS guidance.
What is the advantage to this vs. a small group plan?	Advantages of QSE HRA vs. other options are discussed in the webinar.
Can we determine that the QSEHRA is NOT a group health plan but yet it is subject to some ERISA guidelines?	There is a heated discussion about whether or not QSE HRAs are to be treated as an Employee Benefit Arrangement and subject to ERISA requirements such as plan documents. This remains an outstanding question for regulators to provide further guidance.
Can you have "classes" of employees for QSE HRA. I.e. offer a group plan to salaried but QSE HRA to union	No.
Can we do this in Texas? I was told we could not by TASC.	There are concerns that under Texas law (and similar laws in other states) that these arrangements may be prohibited. From personal experience, these laws are often not state-level prohibitions on what the employer can do, but rather an restriction on the carriers offering health insurance products in the individual market. But for the time, there is no clear answer to that question.
Can a 2% Shareholder of a Sub-S Corp. enjoy the same tax free benefits funding {up to $10K annually} as rank and file employees?!?	They could be, but it would be treated as imputed income to the self-employed individual. However it likely not necessary since self-employed individuals already have the right to deduct 100% of the cost of health insurance

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	coverage for their household under the Internal Revenue Code. See https://www.irs.gov/uac/newsroom/dont-miss-the-health-insurance-deduction-if-youre-self-employed
If the new bill proposes to do away with the ALE mandate, and it is passed... do you suppose the QSEHRA will be extended to employers with 50+	It is unknown how the adoption of repeal and replace legislation would impact QSE HRAs. The American Health Care Act (the House bill recently pulled from consideration) did not do away with the ALE definition but rather eliminated penalties. But since this legislation is not being considered, it is unclear if there would be any impact on QSE HRAs.
Sorry if you answered and I missed, but can an employer offer a group plan AND a QSE HRA for employees on Medicare to assist in payment towards supplements? Can they offer a group plan AND a QSE HRA for those employees that want to opt out and enroll on spousal group plans? Or are these mutually exclusive and not permitted to be combined?	An employer can offer a group health plan and standalone Medicare HRA and/or Spousal HRA under current IRS guidance, but these would not meet the definition of being a QSE HRA under the statute. Remember that the Medicare HRA is only permitted for employers who have 19 or fewer employees (meaning all employees) under Medicare Secondary Payer rules.
If the employer has a QSEHRA, there cannot be a group plan. And since QSEHRA is not considered a group plan by ERISA, why does the unaffordable calculation matter?	It is included in the legislation and was added to save federal spending on premium subsidies.
So if it is unaffordable, then does the employer still need to provide the $300/mo as they will be getting coverage via the marketplace and that subsidy will more than take care of it.	No, the employer's $300 through the QSE HRA would not reduce what the employee would spend on coverage, but would reduce the amount of the household's advance tax credit by the sum provided by the emploiyer.
While the rules/regs and explanation you are providing are fantastic... do you have an opinion on the feasibility of this actually being a good option for an employer concerning the strengths or weaknesses of the individual markets nationwide (as they vary)? In other words, despite this vehicle, there seems to be very little interest due to the weakness and instability of the ind market, vs. other options including small group commercial which seems to be stronger currently (keyword currently).	I would say that in our internal analysis, the small group market is almost always a better fit for most small employers. But there are undoubtedly exceptions where the QSE HRA would be the better fit.
Why do the large employer calculations apply to the small employer plan? If only a non-ALE employer can offer it doesn't make sense they	Since the statute specifically references Applicable Large Employers (as defined in the Affordable Care Act), the large employer

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are required to calculate affordable coverage. IF the GOP plan goes through...mandate is gone as well...so does it matter?	calculations are essential to using a QSE HRA. It is unknown how the adoption of repeal and replace legislation would impact QSE HRAs. The American Health Care Act (the House bill recently pulled from consideration) did not do away with the ALE definition but rather eliminated penalties. But since this legislation is not being considered, it is unclear if there would be any impact on QSE HRAs.
Does the QSE HRA impact the cost-sharing subsidy as well?	It is not clear. But since the cost-sharing subsidy is not considered a part of the advance tax credit, it would likely not be impacted. We will have to wait for regulatory guidance to get a more complete answer to this question.
Since this is a small group, the affordability calc is only to determine subsidy and not employer penalty, correct?	That is correct.
Who is supposed to calculate this for each employee?	An excellent question – that is not clear and the Marketplace has not changed their process to identify when a QSE HRA has been established by an employee's employer. We'll look to further guidance to understand how it will be implemented in the process.
What constitutes proof of coverage? Statement from the carrier? Can the employer pay at the end of the year? Or do they need to pay at hire or in Jan? Or monthly?	This remains an outstanding question for regulators to provide further guidance.
Won't employers just put the QSEHRA into gross wages, yes they'll pay taxes on it but it's not dollar for dollar reduction from their subsidy?	The employer could provide additional compensation to their employees under IRS guidance previously issued but cannot condition it on the employee having other coverage. This falls outside the QSE HRA rules.
If a QSE HRA is offered but the employee chooses not to enroll is the premium credit still reduced? Can an employee choose not to enroll?	Yes it would still be reduced since they are eligible for the benefit. And yes, the employee could refuse to accept the QSE HRA benefit, but the employer will still need to report that the offer was made via W-2 employer reporting. How exactly that would be done will not be clear under we receive additional guidance from regulatory agencies.
Since the Employer cannot offer a plan to put the QSEHRA - why is there affordability testing?	It is included in the legislation and was added to save federal spending on premium subsidies.
In the example is the QSEHRA contribution of	I think this is an essential element to be weighed

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$300/month the only contribution the employer is making… there is no group insurance in force? Why not just put a group plan enforce and pay $300 towards it?	by the employer when considering their options to provide coverage or support for coverage for their employees.
Tax accountant doing the calculation after the fact could be an issue.	Yes, that would seem likely.
So we could actually hurt employees if we are not careful? So we have to do this calculation for each employee...?	From our perspective, working with our clients has resulted in business owners looking at how this QSE HRA option would impact each employee.

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So it sounds like, based on your examples, the QSE-HRA doesn't help anybody?	I would say that in our internal analysis, the small group market is almost always a better fit for most small employers. But there are undoubtedly exceptions where the QSE HRA would be the better fit.
Do you report on the w-2 the amount available or the amount actually reimbursed? We have had clients ask if an employee who is getting a good subsidy can decline the money	Amount available based on our understanding, but that will not be clear until there is regulatory guidance issued by the agencies.
Does NAHU have an approved vendor TPA for these plans?	No, we do not have an endorsed vendor and do not currently have plans to have one.
It would seem a QSEHRA needs a TPA similar to the way a 'regular' HRA needs one because of the calculations and compliance issues.	From the perspective of our agency, we agree. But there may be ways for some small employers to manage these on their own.
So, basically, if a small employer offers a QSE HRA, the employee who receives APTC is overall penalized and possibly in jeopardy of losing the APTC?	Yes that is the way is it is written.
Wouldn't an employer enlist a vendor to set up the HRA?	From the perspective of our agency, we agree. But there may be ways for some small employers to manage these on their own.
We should recommend that the ER should use a TPA to manage those concerns	From the perspective of our agency, we agree. But there may be ways for some small employers to manage these on their own.
What about NYS where individual plans are community rated; not age based?	It is not clear on how this would impact QSE HRAs and the employer's ability to differ amounts to be given to employees based on their age. We will have to get additional guidance from regulatory agencies to better understand the employer's flexibility in NY.
Would this be correct: If an ER is currently reimbursing an EE through increasing salary, paying taxes, and the EE is not Subsidy eligible, this could be a no-brainer, where no current group exists? They can now deduct up to $4950 per EE ($10k with depends). Why wouldn't they do it?	Based on the examples, because it may negatively impact some employees vs. QSE HRA. But overall it is a consideration in why this may be the best solution for an employer.
On the Medicare HRA, can the Part B & D IRMAA premium be reimbursed by the ER?	Based on current guidance, yes.
Could a fire company offer a QSEHRA to volunteer firemen?	I'm not certain. I believe that volunteer firemen are still considered employees under IRS rules.

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If the Republican's new healthcare bill passes and we move to age-based tax credits, will some of the complexity of evaluating a QSEHRA go away?	It is unknown how the adoption of repeal and replace legislation would impact QSE HRAs, especially in light of the decision to not bring the legislation up for a vote in the House. So it is unclear if there would be any impact on QSE HRAs.
I have a vendor that pays me $4.50 per quarter for each HSA I steer their way. Is that considered investment advice?	It could be considered investment advice under current fiduciary rules.
Currently with HSA plans, there are some carriers based on the different scenarios based on age and income the 4 scenarios benefiting each employee differently, what do you think employers are going to do in your professional opinion?	In my opinion, employers will do less to provide multiple options and tell employees to look to the market for other investment vehicles for growing their HSA balances.
I heard of a line of credit being tied to HRA's, do you see that growing if the employee must pay and then be reimbursed?	I have not seen this but I would want to make sure there has been some guidance issued allowing this practice before introducing it to a client.
What type of documentation is needed to set this up? Can agents do this? Vs a T.P.A.?	The documentation is limited to the notice (but may also require a plan document and SPD). Potentially agents could do this or use a TPA. It depends on level of sophistication and concern about legal liability.