



ADVANCED ICHRA COMPLIANCE ISSUES & COVID-19 Updates

Presented by

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QUESTIONS?

You may ask your question in the questions box at any time. Any questions that we do not answer during the webinar will be posted on the compliance corner webpage in the coming weeks.

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TODAY'S PRESENTERS

Annette Bechtold, CIC, ChHC

- SVP, Regulatory Affairs and Reform Initiatives, OneDigital
- Some NAHU roles
 - NAHU, Legislative Council and past chair
 - GAHU, current legislative chair and immediate past president
 - AAHU, past president, legislative chair, and education chair
 - Compliance Corner

Carol Taylor, REBC

- Compliance Officer & Account Executive with Kirby Employee Benefits
- FAHU, Legislative Chair
- NAHU Legislative Council
- Compliance Corner

Mitch Geiger, JD

- VP of Regulatory Compliance at PrimePay and an ERISA attorney
- Former Dept. of Labor investigator
- Former in-house counsel for one of the largest brokerage firms in country

Scott Wham, JD

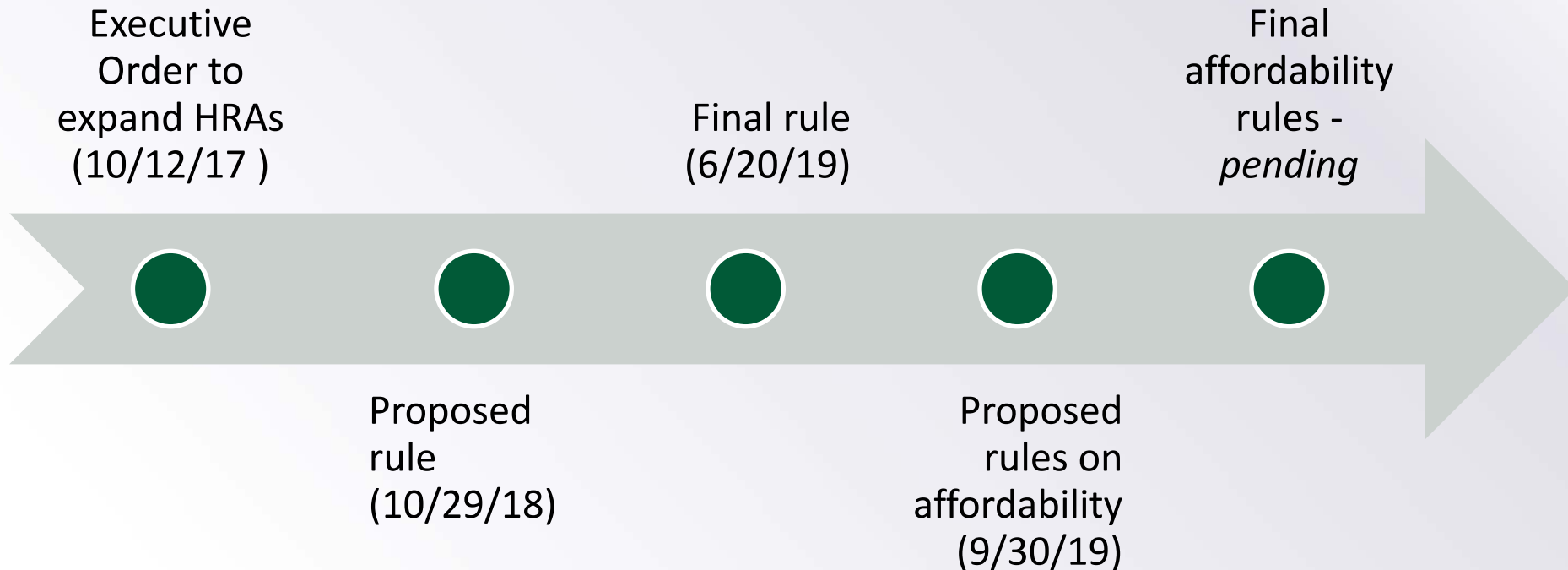
- Director of Compliance & Innovation at Kistler Tiffany Benefits
- NAHU, vice chair of Legislative Council
- GPAHU, vice president

AGENDA

- ICHRAs
 - Summary of HRA Final Rule
 - Common Questions about ICHRAs
 - Costs and Benefits Under Employee Plans
 - Technical and Administrative Challenges
- COVID-19
 - Employer Considerations
 - Plan Considerations
 - Individual Considerations
 - Federal Updates

SUMMARY OF THE FINAL RULE

Summary of HRA Expansion



HRA Final Rule Summary

HRA must require participants and any dependents to be enrolled individual health insurance coverage for each month enrolled in the HRA

Prohibits offering both an HRA integrated with individual coverage and a traditional group plan to the same class of employees

Must offer HRA integrated with individual coverage on the same terms to each participant within the class

Must allow participants to opt out of and waive future reimbursements from the HRA at least annually

Must regularly substantiate and verify enrollment in individual coverage

Provide notice to eligible participants regarding offer and enrollment of HRA

COMMON QUESTIONS ABOUT ICHRAS

Can we use the ICHRA to help our post-65 partners move off the plan?



Can reimburse Medicare premiums, however, employers:

- may only offer an ICHRA to either all employees or certain classes of employees
- must offer to all members of that class, classes are defined specifically in the law, and cannot offer a choice between the ICHRA and a traditional plan
- Classing out by age is prohibited

Can I offer the ICHRA to just my clerical staff?



Employers may offer different terms to different groups of employees if one of the following:

- Full-time employees (using either the 105(h) or 4980H definition);
- Part-time employees (using either the 105(h) or 4980H definition)
- Seasonal employees (using either the 105(h) or 4980H definition);
- Compensation type (e.g. salaried or non-salaried);
- Employees whose primary employment site is in the same rating area;
- Employees covered by a collective bargaining agreement (CBA);
- Employees who have not satisfied a waiting period;
- Non-resident aliens with no U.S.-based income (generally, foreign employees who work abroad);
- Individuals placed for temporary employment that are not common law employees
- Participants in a combination of two or more classes above



Can excess employee contributions be taken pre-tax?



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May allow individuals to deduct excess premiums not covered by the HRA through section 125 plan – applies to individual coverage purchased off Exchange only

Do I have to have a minimum of 10 employees in my ICHRA group?



- Applies if a plan sponsor offers a traditional group plan to one or more classes of employees and offers an individual coverage HRA to one or more other classes –
- If ALL are offered ICHRA, there is no minimum size requirement

Applicable Classes

Full-time (*unless part-time are not offered coverage*)

Part-time

Salaried/non-salaried only if one is offered traditional and one the individual coverage HRA

Employment site in same rating area (*unless State or multiple States*)

Combination of any above with any other class, except those in waiting period

Determination of Size

Must be determined at the beginning of each plan year

Applies only to the ICHRA

Determination is based on the number of employees in the class offered the ICHRA as of the first day of the plan year

Not based on number of enrollees in the ICHRA

Consistency

Employers may define full-time, part-time, and seasonal using 105(h) or 4980H definitions

HRA plan document must define prior to plan year

May offer traditional group plan to employees of a certain class but offer ICHRA to new hires in the same class hired on or after a specified date (subclass) – may set subclass date on or after January 1, 2020

Criteria

Under 100 EEs = 10

100-200 employees = 10%, rounded down, of total number of employees

200 employees = 20

Does not apply to the new hire subclass unless the new hire subclass is subdivided prior to creating the new hire subclass commensurate with class division type

Does offering an ICHRA meet my responsibilities as an ALE?



ALE Responsibility to Offer

An HRA is an eligible employer-sponsored plan

Tier 1 – Failure to offer

- If offered to 95% of full-time employee and their dependents, employers satisfy provision and 4980H(a) penalty does not apply, i.e. failure to offer

Tier 2 – Failure to offer affordable, MV coverage

- Affordable if employee contribution for a month does not exceed $1/12 \times$ (household income/safe harbors Box 1 of W2, Rate of Pay or FPL)

ALE Penalty Assessments

- The ICHRA is Minimum Essential Coverage (MEC) for the purposes of Employer Shared Responsibility 4980H
- As such the offer will satisfy Penalty A of the “mandate” if offered to 95%
- If the HRA is affordable, it will also satisfy Penalty B
- *[NOTE: proposed rule introduces a number of optional affordability safe harbors for employers]*

HRAs & Employer Shared Responsibility - Affordability

Affordability and Minimum Value

- Required contribution is excess of:

Monthly premium for lowest cost silver plan (self-only) - monthly self-only HRA amount available

- Amount is prorated for mid-year offer or eligibility
- Affordability = household income x required %
- Automatically meets minimum value if it's affordable
- Affordability safe harbor for employees states affordability determination at enrollment lasts for the whole year

Example:

\$500/month = Lowest silver plan premium
- 200/month = Employer HRA contribution
\$300/month = Employee's required contribution

(Cost of silver plan less HRA dollars available)

- Employee's household income is \$24,000, or \$2,000 per month

Monthly Affordability = \$2,000 x 9.78% (for 2020), or \$195.60

NOTE: if there is a silver-level plan that has one rate for tobacco users and one rate for non-tobacco users, the rate for non-tobacco users will apply to determine affordability of the individual coverage HRA.

Is a 90-day notice required prior to offering?



ICHRA Model Notice

Written Notice

- To participants: at least 90 days prior to the start of the plan year
- To newly eligible employees: No later than the ICHRA effective date

Content

- Terms and conditions of HRA, including dollar maximum
- Explanation of different HRA types
- Limitation for use with excepted benefits, including STDLI plans
- ERISA applicability
- Interaction and impact to premium tax credits
- Participants right to opt out or waive
- Requirements for substantiation
- Enrollment options in Exchange and elsewhere
- Participant responsibilities on enrollment changes
- Amount of HRA relevant to determine affordability

I offer an ICHRA, does this create an SEP for my new hires?



If an individual gains access to an ICHRA, they may:

Enroll in individual health insurance coverage or change from one individual plan to another*

**Applies on and off the Exchange*

Do I have to use an employee's residence to determine affordability?



Location Safe Harbor

Employee's
residence

Primary worksite
(*Optional Safe Harbor*)

Applicable Premium Rates

Calendar year
plans may use LCSP
for January of prior
year*

Non-calendar year
plans may use LCSP
for January of
current year



Age

No safe harbor for
individual age

LCSP = lowest
individual market
age band for EE's
applicable location

*CMS released employer [LCSP look-up tool](#) based on January 2019 rates

Given the COVID-19 crisis, are ICHRAs a possible solution for employers?

Scenario		
Employer is looking to reduce costs without furloughing or laying off employees	X	
Business is operating and wants to maintain stability for employees during this time		X
Employer is eliminating health plan for all employees	X	
Business is closing permanently		X
Employer looks to eliminate traditional coverage for one or more classes, locations, or separate business divisions	X	

Costs and benefits under employee benefit plans

§ 1625.10 Costs and benefits under employee benefit plans.

(ii) *As a condition of participation in a voluntary employee benefit plan.* An older employee within the protected age group may be required as a condition of participation in a voluntary employee benefit plan to make a greater contribution than a younger employee only if the older employee is not thereby required to bear a greater proportion of the total premium cost (employer-paid and employee-paid) than the younger employee. Otherwise the requirement would discriminate against the older employee by making compensation in the form of an employer contribution available on less favorable terms than for the younger employee and denying that compensation altogether to an older employee unwilling or unable to meet the less favorable terms. Such discrimination is not authorized by section 4(f)(2). This principle applies to three different contribution arrangements as follows:

(A) *Employee-pay-all plans.* Older employees, like younger employees, may be required to contribute as a condition of participation up to the full premium cost for their age.

(B) *Non-contributory (“employer-pay-all”) plans.* Where younger employees are not required to contribute any portion of the total premium cost, older employees may not be required to contribute any portion.

(C) *Contributory plans.* In these plans employers and participating employees share the premium cost. The required contributions of participants may increase with age so long as the *proportion* of the total premium required to be paid by the participants does not increase with age.

Technical and Administrative Challenges

Advanced Notification Requirement

- Must be provided at least 90 days before beginning of plan year.

Choosing Eligible Class

- Potential minimum-class-size requirement
- Affordability calculation under 4980H requirement

Cafeteria Plan Issues

- Coverage purchased through an Exchange not eligible for pre-tax payment of premiums

Technical and Administrative Challenges

Individual Coverage Attestation (annual and ongoing)

- Ongoing attestation requirements can preclude use of debit cards and auto-substantiation for qualified medical expenses
- Insurance carrier with multiple premium billing codes may also preclude use of debit card for payment of premiums

COVID-19 UPDATES



This is a fluid and constantly evolving situation



CHANGES WILL HAPPEN!!!!



Remember to check Federal, State and Local guidance



Changes in benefits may have impacts in both the short- and long-term.

Employer Considerations


- Insurance Carrier – Policy documents
 - Cannot reduce coverages, may only improve
- Plan Documents
- Business Needs
 - Going concerns, Severance
- State Laws
 - Small group continuation laws by state
 - Federal COBRA
- Special Enrollment Periods on Marketplace (WA, CT, CO, MD...)
- Workers Compensation – if employee contracts COVID-19 at workplace, it is reportable event under OSHA guidance
- P&C coverages – check policies

Health Plan Considerations

- Many medical carriers have sent out bulletins on any changes required
- State laws
- Diagnostic testing is considered an Essential Health Benefit, testing for COVID-19 would be included
- **Self-funded groups** – may require stop loss/reinsurance approval and could change rates and/or factors, plan amendments, etc
- **Grandfathered plans** – could be affected if later there is an “elimination of all or substantially all benefits to diagnose or treat a particular condition” (further guidance could be issued to allow, but for the moment, none has been)

Individual Considerations

- Marketplace webinar on Thursday March 19th (today) at 2 pm EST
- Register on REGTAP.info
- Special Enrollment Periods
- If COBRA elected, then that must be exhausted before SEP occurs



Helping Consumers Report Changes to the Marketplace

For this session, CMS will:


- Provide information for agents and brokers assisting consumers who need to report life changes to the Marketplace.
- Discuss how to report changes to eligible household members, dental coverage, employer-sponsored coverage, and Medicare eligibility.
- Respond to participant questions.

Day	Date	Time
Thursday	March 19, 2020	2:00 – 3:30 p.m. ET

If you would like to attend, please visit www.REGTAP.info and register for the agent and broker webinar series titled "Health Insurance Marketplace Plan Year 2020 Updates for Agents and Brokers."

Registration will close 24 hours prior to each session.

If you require further assistance, you may contact Registration Support at: 1-800-257-9520 or registrar@regtap.info.



Federal Updates - HSAs

- IRS Notice 2020-15 – Published 3/10/2020 to facilitate the nation's response to the COVID-19 pandemic.
 - Notice ensures barriers to test for and treat COVID-19 as well as administrative delays or financial disincentives that might impede testing or treatment for owners of HSAs are not a problem.
 - Provides that, until further notice or further guidance is issued, a health plan that otherwise satisfies the requirements of an HDHP will not fail to be an HDHP merely because the health plan provides health benefits associated with testing for and treatment of COVID-19 before the minimum statutory HDHP deductible is met. This includes any testing or treatment provided without cost-sharing, including telemedicine visits related to COVID-19.
 - Other expenses to note: office visits, lab tests, medications, urgent care visits, emergency room visits, hospitalization or isolation facility charges could be paid by insurance below the deductible without fear of HSA consequences, if directly related to COVID-19. Of course, all qualified medical expenses may be paid from an HSA.
 - Keep in mind that any over-the-counter medicine may be purchased with funds from an HSA, healthcare flexible spending account (FSA), or health reimbursement arrangement (HRA), ***if prescribed by a doctor.***



Federal Updates – FFCRA

- House passed Families First Coronavirus Response Act on Saturday, March 13, 2020
- Technical Corrections done on March 16, 2020
- Senate passed the bill without changes on March 18, 2020.
- The President signed the bill into law last night. The effective date is April 2nd



Federal Updates – FFCRA

Emergency FMLA

- Employers with fewer than 500 employees
- Employee worked for 30 calendar days prior to leave
- Must be Qualifying Need
- Employee unable to work (or telework) due to need to care for a minor child if the school or place of childcare has been closed or is unavailable due to public health emergency.
- First 10 days unpaid (but can use accrued PTO/sick/vacation time), then 12 weeks of paid leave at 2/3 normal rate, **job protected (with some exemptions for fewer than 25 employees)**
- Employers with fewer than 50 employees may be granted a waiver when the requirements would jeopardize the viability of the business as a going concern
- Employers may exclude employees who are health care providers or emergency responders from this FMLA entitlement
- Refundable tax credit capped at \$200 per day/\$10,000 aggregate per employee



Federal Updates – FFCRA

- **Emergency Paid Sick Leave**
 - Fewer than 500 employees
 - No duration of employment required (ie – 1 day would qualify)
 - Full-time - 80 hours of paid sick leave; Part-time – based on average of prior 6 months, for a two week period
 - Exemptions for health care providers/emergency responders, employers with fewer than 50 employees to care for child if it would jeopardize the viability of the business as a going concern or as necessary
 - Notice requirements would apply

Federal Updates – FFCRA

- **Emergency Paid Sick Leave**
- “To the extent the employee is unable to work (or telework) due to a need for leave because of”:
 - 1) Employee is subject to quarantine or isolation order (federal, state or local) due to COVID-19
 - 2) Employee advised to self-quarantine by health care provider due to concerns related to COVID-19
 - 3) Employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis
 - 4) Employee is caring for an individual who is subject to order or self-quarantine (see above)
 - 5) Employee is caring for a son or daughter if childcare or school is closed/unavailable
 - 6) Employee is experiencing “any other substantially similar condition” as specified by HHS

Federal Updates – FFCRA

- **Emergency Paid Sick Leave**
 - For qualifying reasons 1, 2 or 3, compensated at **higher** of:
 - Regular rate
 - Federal minimum wage or
 - Local minimum wage
 - Tax credit capped at \$511 per day/\$5,110 in aggregate per person
 - For qualifying reasons of 4, 5 or 6, compensated at 2/3 of the employees regular rate
 - Tax credit capped at \$200 per day/\$2,000 in aggregate per person
 - This sick leave does not carryover, sunsets 12/31/2020
 - Employee may first use this paid sick time before other paid leave
 - Employer may not require employee to use other paid leave provided by the employer before using this paid sick leave



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