



HRA FINAL RULE COMPLIANCE CONSIDERATIONS

**Understanding the 6/13/19
final rule expanding HRAs**

**Presented by
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TODAY'S PRESENTERS

Joan Fusco, HIA, PAHM, RHU

- Director, NAHU Relations, Savoy Associates
- 47 years in insurance industry
- In the compliance realm
- NAHU roles
 - ACA Certified by the NAHU and the American College
 - NAHU Compliance Corner Committee Chair
 - NAHU General Agency Principal's Council
 - NJ Chair, Life & Health Commissioner Advisory Board
 - NJAHU Legislative Council

Annette Bechtold, CIC, ChHC

- SVP, Regulatory Affairs and Reform Initiatives, OneDigital
- 35 years in benefits insurance industry
- NAHU roles
 - NAHU, Legislative Council and past chair
 - NAHU, Principal's Council
 - GAHU, current legislative chair and immediate past president
 - AAHU, past president, legislative chair, and education chair
 - Compliance Corner
 - Futures Advisory Council

AGENDA

- HRAs Today– *Current rules and integration*
 - *Integrated and standalone HRAs*
 - *Review of excepted benefits*
- Understanding the final rule – *Expansion of use*
 - Reimbursing individual premiums
 - Allowance of standalone HRAs for excepted benefits
- Implementation of the rule – *Employer responsibilities*
 - Effective date
 - Substantiation and notification requirements
- Considerations before adopting – *Compliance perspective*
 - Interaction with other laws and regulations
 - Best practices

HRAS TODAY

Current rules and integration

Defining HRAs TODAY

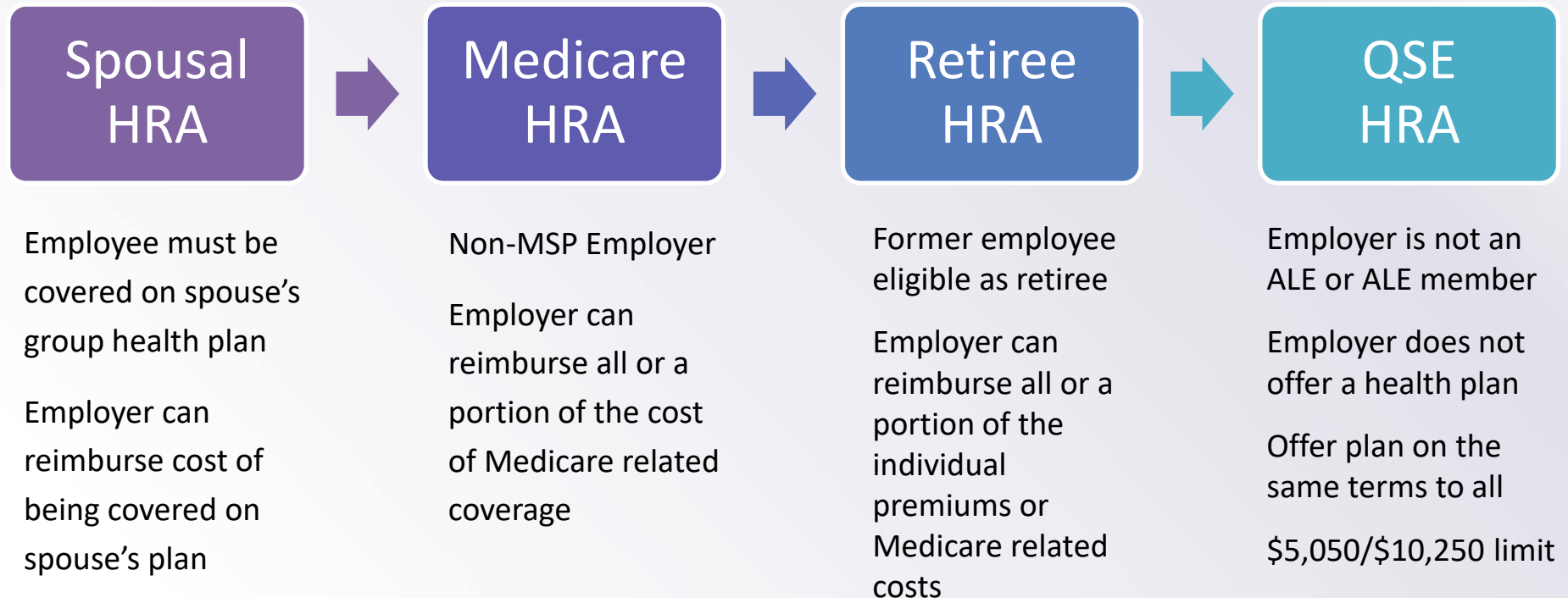
Integrated HRA

- **Must be integrated with a group health plan and only to enrolled individuals**
- **Used to reimburse deductibles, coinsurance or copayments**

Standalone HRA

- **Generally prohibits payment of individual premiums through standalone HRA**
- **Exceptions for spousal coverage, retirees and certain Medicare enrollees**

Current Allowable Premium Reimbursements



Current Excepted Benefits

Non-Health & Limited Wraparound



Benefits that are generally not for health coverage or are limited wraparound coverage

Limited Scope Benefits



May include limited scope dental or vision benefits and benefits for LTC or home/community based care

Non-Coordinated Benefits



Includes both coverage for only a specified disease/illness (such as cancer-only) and hospital or other fixed indemnity coverage

Supplemental Benefits



Coverage provided under insurance that is a Medicare or Tricare supplement or “similar” coverage designed to fill gaps

These benefits are excepted only if certain conditions are met:

- ☐ Automobile Insurance
- ☐ Liability Insurance
- ☐ Workers Compensation
- ☐ AD&D
- ☐ On-Site Clinics
- ☐ Out-of-Network Services
- ☐ Drugs Not in Formulary
- ☐ Ten Physician Visits Per Year

- ☐ Provided under an insurance policy/contract separate from a major medical plan
- ☐ Not an integral part of a group health plan (optional at additional cost)

- ☐ Provided under a separate insurance policy/contract
- ☐ No coordination between provision/exclusion of benefits under employer GHP
- ☐ Benefits paid regardless of whether benefits under employer GHP

- ☐ Provided by different issuer than primary coverage
- ☐ Costs no more than 15% of cost of primary coverage
- ☐ Not vary eligibility, premiums, or benefits based on a health factor
- ☐ Not provide Essential Health Benefits as provided by the applicable state.

UNDERSTANDING OF THE FINAL RULE

Expansion of use

Summary of HRA Expansion



Executive Order signed 10/12/17

- Provides instruction to the Secretaries of HHS, Treasury and Labor to explore feasibility of expanding association health plans (AHPs), short-term limited duration insurance and health reimbursement arrangements (HRAs)

UNDER THE FINAL RULE:

Expands the 2017 QSEHRA legislation that was only available to non-ALEs

Employees will be able to use HRA funds to pay the premium for individual insurance coverage, a/k/a ICHRA, purchased either on or off the public Marketplace or Medicare premium but not for excepted benefits

OR

Allow employers that offer traditional group health coverage to offer an HRA to reimburse employees for certain medical expenses, and excepted benefits including stand-alone dental or vision benefits or premiums for Short-Term Limited Duration Insurance (state preclusion!)

No requirement to enroll in group health plan

Final Rule on Individual Coverage HRAs (ICHRAs)

For health reimbursement arrangements (HRAs) and other account-based group health plans, the final rule allows :

- integration of HRAs with individual health insurance coverage; and
- prohibits discrimination

RULE SUMMARY:

The new Individual Coverage HRAs can integrate with:

1. individual insurance coverage purchased on or outside the ACA marketplace;
2. fully insured student health insurance coverage;
3. individual insurance coverage obtained in states that have received a waiver (called a Section 1332 waiver) of certain ACA requirements;
4. individual catastrophic coverage;
5. coverage under Medicare Parts A, B, C, or D and Medigap
6. individual Coverage HRAs may NOT, however, be integrated with short-term limited duration insurance or excepted benefit *coverage (some states have specific rules about short-term plans)*

Understanding Medicare Rules



- Types of individual coverage - Medicare Parts A, B, and C
- Anti-duplication rules – make it unlawful to sell or provide an individual health policy that duplicates the health benefits to which the individual is otherwise entitled under Medicare or Medicaid
- Equal Benefit Rule - group health plans of employers with 20 or more employees must provide to any employee 65 or older the same benefits, under the same conditions, that the plan provides to those individuals under age 65 – applies to those with ESRD
- Medicare Secondary Payer – prohibit employers whose group health plans are primary, from incenting Medicare employees to not enroll or terminate the group health plan thereby making Medicare primary

ICHRA Integration with Medicare

SSA Rules	ICHRA Final Rule
Anti-duplication rules	No exception to the anti-duplication rules for individual health insurance coverage purchased with an ICHRA
Equal Benefit Rule	<ul style="list-style-type: none">• GHPs may not take Medicare entitlement into account when providing benefits• Must offer the same benefits under same conditions• Final rule permits an ICHRA to be integrated with either individual coverage or Medicare if individual is enrolled in Medicare A, B, or C and can reimburse premiums for Medicare A, B, C, D, or Medigap policies
Medicare Secondary Payer*	ICHRA may integrate with Medicare regardless of MSP status since anti-duplication provision applies to any HRA plan sponsor

**UNLESS it provides a financial incentive for Medicare beneficiaries to decline group health plan enrollment making Medicare the primary coverage*

HRA Integration Requirements

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

Different Class Terms Allowable

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



Minimum Class Requirements

- 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

Rules on ICHRA Amounts

Increases in ICHRA amounts will not violate the provision to offer on “same terms” if increases are based on :



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Dependents

- If same dollar max is available to all participants in class with same number of dependents

Age

- Changes allowed during plan year if:
 - Same dollar max is available to all who are the same age; AND
 - Dollar max for the oldest participant(s) is not more than 3x the max available to the youngest participant(s)

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

ICHRA and HSA-Compatible HDHP



- ICHRAAs can be designed to reimburse all [Code § 213\(d\)](#) medical care expenses or to limit reimbursements to particular expenses (e.g., premiums).
- ICHRAAs can be designed to be HSA-compatible by only reimbursing premiums or limiting reimbursements above the minimum HSA deductible.
- For 2020 the minimum single deductible is \$1,400 and \$2,800 for family
- Employees in the same class can be offered a choice between an HSA-compatible ICHRA and one that is not HSA-compatible.

Opt-Outs and Waivers

- Under the ACA, premium tax credits(PTC) are only available if individuals are not offered MEC
- To help individuals elect a PTC, if the coverage is unaffordable or does not meet MV, and remain eligible for an entire plan year...
 - Individuals must be given an opportunity to decline the HRA AND
 - Waive all future reimbursements from the HRA for that year
- Upon termination of employment, participants must either forfeit the remaining balance (subject to COBRA) or be able to permanently opt out of and waive future reimbursements



ERISA Implications for ICHRAs

Status under ERISA of an HRA, QSEHRA, or supplemental salary reduction arrangement remains unaffected



Individual health insurance coverage reimbursed by a plan will not be treated as part of a group health plan if:

1. Coverage purchased is voluntary for employees;
2. Employer/plan sponsor does not select or endorse an issuer/carrier
3. Reimbursement for non-group health insurance premiums is limited only to individual coverage
4. Employer/plan sponsor receives no consideration
5. Each participant is notified annually that individual coverage is not subject to ERISA

ICHRA - COBRA

- Loss of coverage due to a termination of employment or a reduction in the number of hours of employment generally is a loss of coverage due to a qualifying event.
- An employee covered by an ICHRA, due to a reduction in hours, is moved to a class of employees who are not offered any group health coverage would have a right to COBRA or other group continuation coverage in the HRA, as would an individual who loses coverage under the HRA due to termination of employment.
- HRA COBRA or other group continuation coverage would be conditioned on a timely election of COBRA or other group continuation coverage and payment of COBRA or other group continuation coverage premiums, as well as maintaining (or enrolling in) individual health insurance coverage.



EXPERT TIP: Since HRAs are not fully insured plans, they are generally not subject to state continuation.

Expansion of SEP Rules

1. Allow employees and their dependents to enroll or change individual health insurance coverage outside of the individual market annual open enrollment period if they gain access to an HRA integrated with individual health insurance coverage
2. Applies new special enrollment period to individuals who are provided QSEHRAs
3. Coverage is effective date the first day of the first month following the individual's plan selection
4. If plan selection is made prior to the HRA effective date, then coverage begins on the first day of the month following the qualifying event or first of the month if triggering date is on the first of the month
5. Individuals may elect to report the qualifying event up to 60 days after the date of the qualifying event and qualify for the special enrollment period during the regular special enrollment period window
6. HHS proposes to include this special enrollment period in the limited open enrollment periods available off Exchange



HRAs & Employer Shared Responsibility

– Mandate to Offer

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: no safe harbors apply to affordability]*

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
- Automatically meets minimum value if it's affordable
- Affordability safe harbor for employees states affordability determination at enrollment lasts for the whole year

Example:

- Lowest silver plan premium is \$500 monthly minus the
- Employer HRA contribution is \$200 monthly

Affordability = \$300 x %

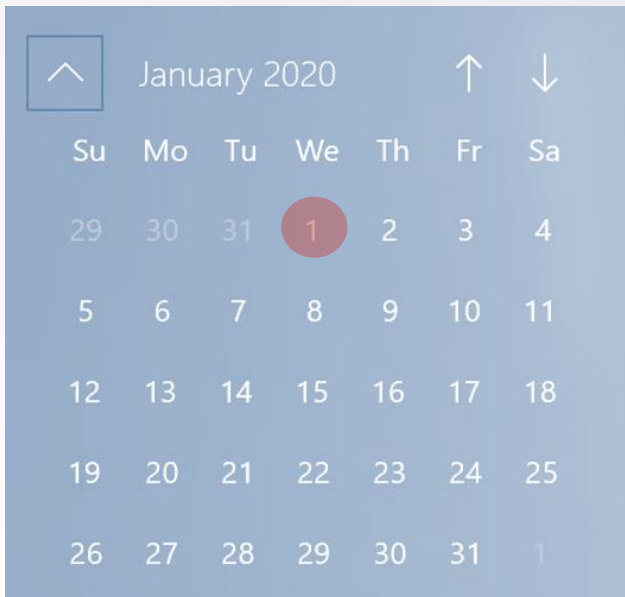
[% for 2020 NOT YET RELEASED]

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.

IMPLEMENTATION OF RULE

Employer responsibilities

Applicability Date



- Rule applies to group health plans and insurance issuers for plan years beginning on or after January 1, 2020
- PTC provisions would be effective for tax years beginning on or after January 1, 2020
- HHS special enrollment periods would be effective January 1, 2020

New Limited Excepted Benefit HRA

- To be an excepted benefit HRA, it must:
 - ✓ not be an integral part of the plan,
 - ✓ provide benefits that are limited in amount,
 - ✓ not provide reimbursement for premiums for certain health insurance coverage, and
 - ✓ must be made available under the same terms to all similarly situated individuals
- Plan year maximum \$1,800 (annual cost of living adjustment beginning after 12/31/2020)
- Any amounts carried over from prior year are disregarded for purpose of determining limit
- If employer offers multiple HRAs, the available amount is the aggregate

Employer Notice Requirements

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 STD/LI 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

Substantiation and Verification



[ICHR Model Attestation](#)

- Must implement and comply with reasonable procedures
 - Document from third party showing coverage
 - Attestation by participant stating individual(s) will be enrolled, effective date of coverage, and name of provider
- May not reimburse any expense in the current plan year without substantiation

CONSIDERATIONS BEFORE ADOPTING

Compliance Perspective

Who does this fit?

The agencies are significant proponents estimating that 11M people will use these new options but which employers will this really fit?

Pros

- Coverage is portable for employee
- Employer doesn't have to be in the business of insurance
- Not subject to ERISA as long as employer doesn't take on any fiduciary responsibility
- Employer can more economically avoid ACA's 4980H(a) penalty
- No need to worry about participation

Cons

- Broker needs to replace income
- Onerous substantiation and notification requirement for employers
- Employers must substantiate a valid reimbursement claim
- Difficult for employer to class out and stay compliant
- §105(h) nondiscrimination testing applies

Medicare Secondary Payer

As an employer, you must:

- Ensure that your plans identify those individuals to whom the MSP requirement applies;
- Do not provide incentives for individuals to drop their group health plan
- Ensure that your plans provide for proper primary payments where by law Medicare is the secondary payer;
- Ensure that your plans do not discriminate against employees and employees' spouses age 65 or over, people who suffer from permanent kidney failure, and disabled Medicare beneficiaries for whom Medicare is secondary payer; and
- Accurately complete and submit Data Match reports timely on identified employees.

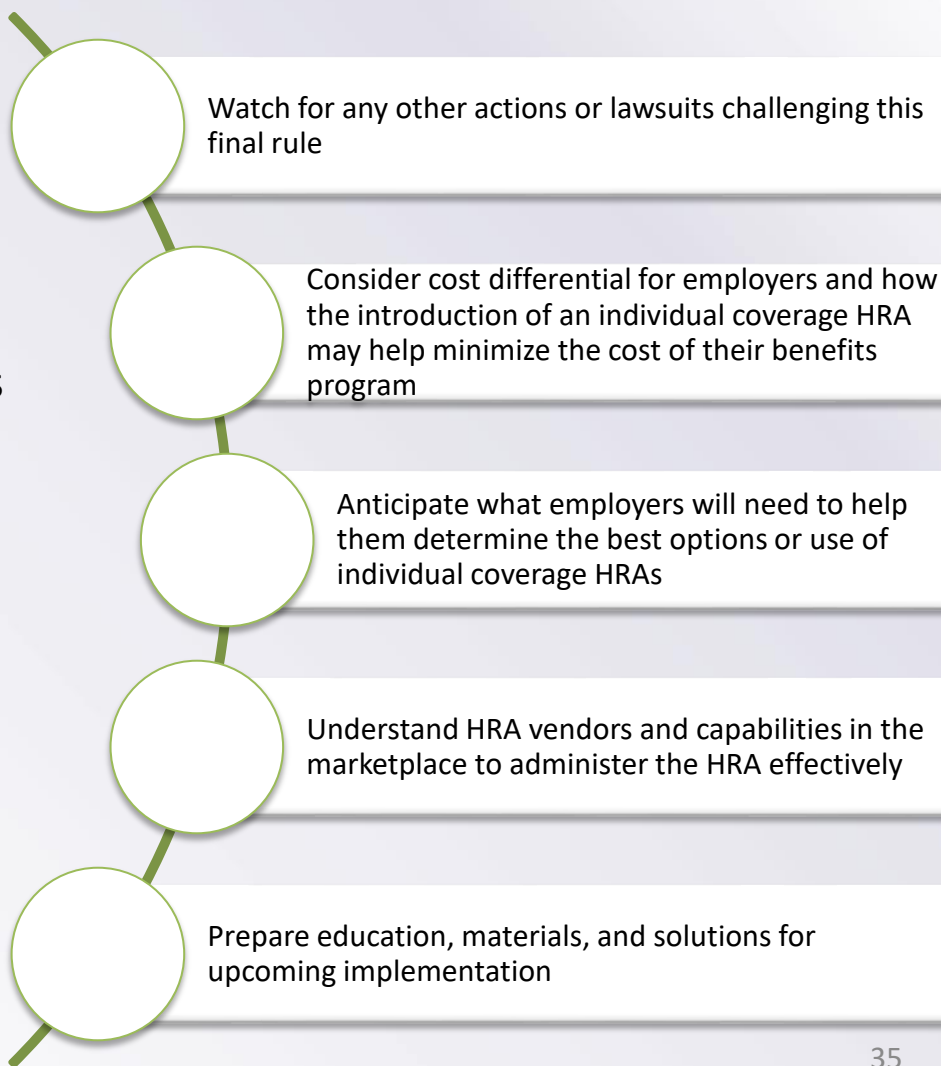


Medicare Secondary Payer Compliance

- 65 or older
 - Employer has 20 or more total employees 20 or more weeks prior or current calendar year – Medicare is secondary
 - Employer has less than 20 EEs – Medicare is primary
- Under 65 and disabled – covered by GHP and employer has 100 or more for majority of prior calendar year – Medicare is secondary
- ESRD – first 30 months of eligibility or entitlement – Medicare is secondary

Consideration Checklist

- ✓ HRAs are group health plans and considered MEC – avoids 4980H(a) penalty
- ✓ Gives employers more flexibility with overall benefit program design by class
- ✓ Employer may set definitions of classes
- ✓ Provides alternative offerings for new hires
- ✓ Could significantly effect the number of participants in traditional group health plans and corresponding compensation



Watch for any other actions or lawsuits challenging this final rule

Consider cost differential for employers and how the introduction of an individual coverage HRA may help minimize the cost of their benefits program

Anticipate what employers will need to help them determine the best options or use of individual coverage HRAs

Understand HRA vendors and capabilities in the marketplace to administer the HRA effectively

Prepare education, materials, and solutions for upcoming implementation



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Resources

- HRA final rules
- <https://www.federalregister.gov/documents/2019/06/20/2019-12571/health-reimbursement-arrangements-and-other-account-based-group-health-plans>
- <https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-12571.pdf>
- IRS final rules and templates
- <https://www.irs.gov/newsroom/health-reimbursement-arrangements-hras>
- Final Regulation
 - [PDF](#)
- Individual Coverage HRA Model Attestations
 - [PDF](#)
 - [DOCX](#)
- Individual Coverage HRA Model Notice
 - [PDF](#)
 - [DOCX](#)
- Frequently Asked Questions (FAQs)
 - [PDF](#)

Resources

- Fact Sheet https://www.irs.gov/pub/irs-utl/health_reimbursement_arrangements_faqs.pdf
- News Release <https://home.treasury.gov/news/press-releases/sm708>