UPDATE

QSE HRA

Qualified Small Employer Health Reimbursement Arrangements

PROTECTING THE CONSUMER'S FUTURE

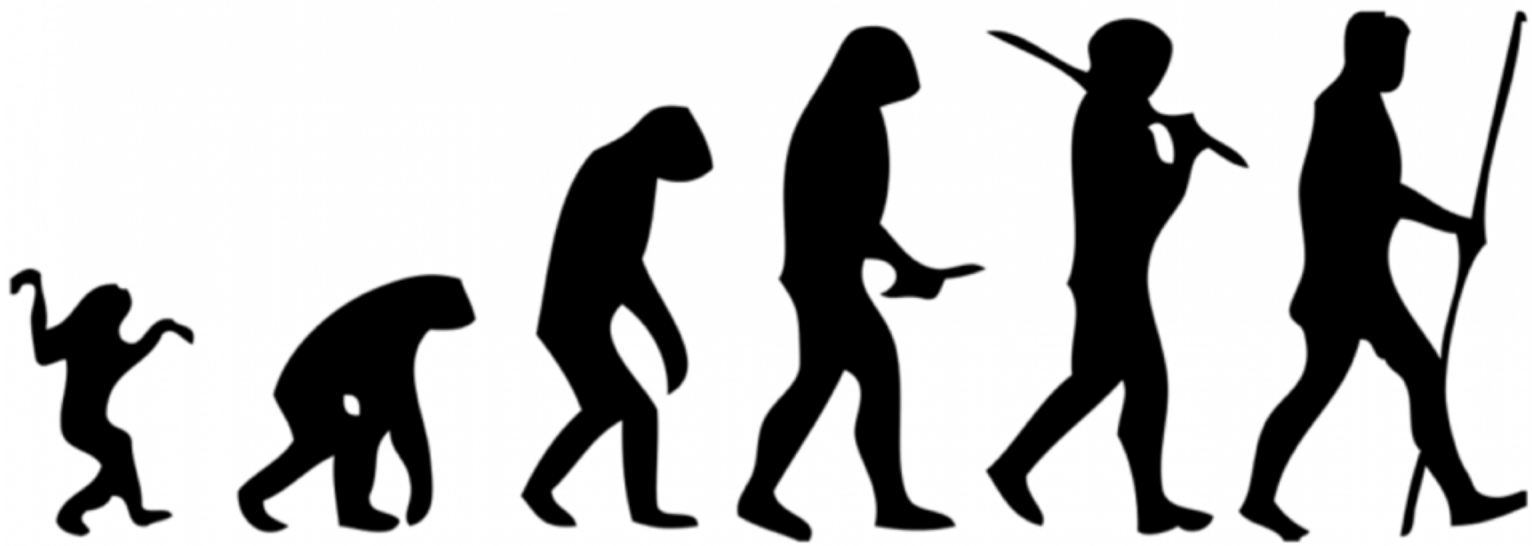
NAHU

National Association of Health Underwriters

AMERICA'S BENEFITS SPECIALISTS

COMPLIANCE CORNER

BACKGROUND



Employer Payment Plans

RR 61-146

Medical Expense Reimbursement Plans

IRC 105

Health Reimbursement Arrangements

RR 2002-41, 45

Integrated vs. Standalone HRA Restrictions

Notices 2013-54, 2015-17, 2015-87

INTEGRATED VS. STANDALONE

- Must be integrated with a group health plan
- Used to reimburse deductibles, coinsurance or copayments

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

QSE HRA

- From the 21st Century Cures Act (December 2016), Congress permitted small employers to create something new… something different

QUALIFIED SMALL EMPLOYER
HEALTH REIMBURSEMENT ARRANGEMENTS

QSE HRA PERCEPTION VS. REALITY

Yeah!! Something NEW!!!

WAIT!?!?! We gotta do what?

QSE HRA RULES

Full-time, non-seasonal, employed
90 days, at least 25 years of age

Must be a non-ALE

Do not offer
health insurance
to their employees

Must offer QSE HRA
to all eligible employees

Employee must be
covered on insurance

QSE HRA BENEFITS

IRS SECTION 213(d) QUALIFIED MEDICAL EXPENSES

The Internal Revenue Service defines qualified medical care expenses within IRS Section 213(d). Medical care expenses are further defined as amounts paid for the diagnosis, cure, mitigation or treatment of a disease, and for treatments affecting any part or function of the body. The expenses must be primarily to alleviate a physical or mental defect or illness.

The products and services listed below are examples of medical expenses eligible for payment under a Flexible Spending Account and Health Reimbursement Account. This list is not all inclusive; additional expenses may qualify, and the items listed below are subject to change in accordance with IRS regulations.

Eligible Expenses

DENTAL SERVICES
Crowns/Bridges
Dental X-Rays
Dentures
Exams/Teeth Cleaning
Extractions
Fillings
Gum Treatment
Oral Surgery
Orthodontia/Braces

INSURANCE RELATED ITEMS
Co-pay and Coinsurance Amounts
Deductibles
Pre-existing Condition Expenses (medical)
Private Hospital Room Differential

LAB EXAMS / TESTS
Blood Tests
Cardiographs
Diagnostic
Laboratory Fees
Metabolism Tests
Spinal Fluid Tests
Urine/Stool Analyses
X-Rays

MEDICATION
Insulin
Prescribed Birth Control
Prescribed Vitamins
Prescribed Drugs

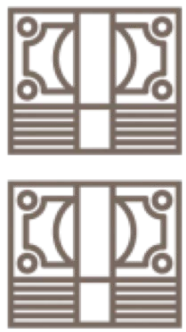
OVER-THE-COUNTER-MEDICATION
Over-the-counter medicines, drugs, or dietary supplements for a specific medical condition:
Allergy Medicine
Antihistamines
Analgesics
Antacids
Anti-Diarrhea Medication
Aspirin
Calcium Supplements
Cold Medicine
Contact Lens Solution
Cough Drops
First Aid Cream (Bactine, special diaper rash ointments, calamine lotion, bug bite medication, wart remover treatments)
Hemorrhoidal Medications
Laxatives (like Ex-Lax)
Menstrual Cycle Products
Motion Sickness Pills
Muscle / Joint Pain Relief (Ben-Gay, Tiger Balm)
Nasal Sinus Spray
Nasal Sprays (for snoring)
Nicotine Gum / Patches
Pain Reliever
Pedialyte
Pills for persons who are lactose intolerant
Pregnancy Tests
Pre-Natal Vitamins
Reading Glasses
Retin A (non-cosmetic)
Rubbing Alcohol
Sinus Medications
Sleeping Aids
Smoking Cessation Products
Special Foods (cost difference of common product)
Special Ointment/Cream for Sunburn
Throat Lozenges
Visine
Weight Loss Drugs (to treat a specific Disease)
Wound Care Products

OBSTRETRIC SERVICES
Lamaze Class
Mid-Wife Expenses
OB/GYN Exams
OB/GYN Prepaid Maternity Fees (Reimbursable after date of birth)
Post-Natal Treatment
Pre-Natal Treatment

PRACTITIONERS
Allergist
Chiropractor
Christian Science
Dermatologist
Homeopath
Naturopath
Osteopath
Physician
Psychiatrist
Psychologist

OTHER MEDICAL TREATMENTS / PROCEDURES
Acupuncture
Alcoholism (inpatient treatment)
Bio-feedback Therapy (in medically necessary situations)
Reconstructive surgery (if medically Necessary due to a congenital defect or accident)
Drug Addiction
Hearing Exams
Hospital Services
Infertility
In-vitro Fertilization
Norplant insertion or Removal
Patterning Exercises
Physical Examination (not employment related)
Physical Therapy
Rolfing
Speech Therapy
Sterilization

Reimburse any 213(d) eligible medical expense



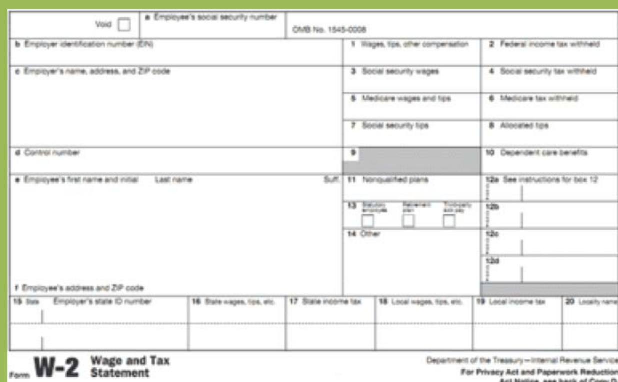
$5,050

$10,250

Maximum Annual Benefits

Employer pays 100% of QSEHRA Benefits

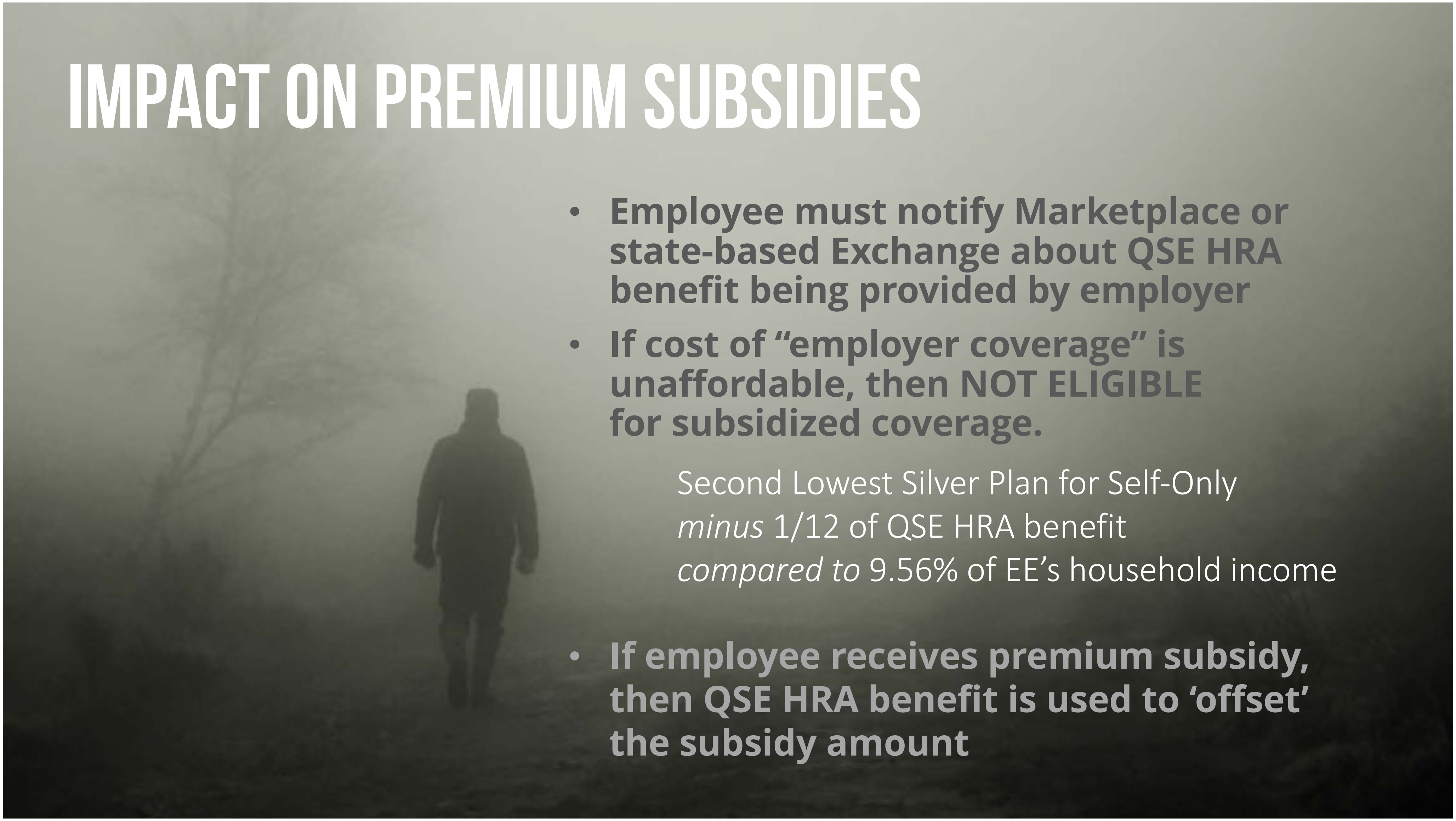
QSE HRA OBLIGATIONS


Void
a Employee's social security number
OMB No. 1545-0008
b Employer identification number (EIN)
1 Wages, tips, other compensation
2 Federal income tax withheld
c Employer's name, address, and ZIP code
3 Social security wages
4 Social security tax withheld
5 Medicare wages and tips
6 Medicare tax withheld
7 Social security tips
8 Allocated tips
d Control number
9
10 Dependent care benefits
e Employee's first name and initial
Last name
Suff.
11 Nonqualified plans
12a See instructions for box 12
13 Statutory employee
Retirement plan
Third-party sick pay
12b
14 Other
12c
12d
f Employee's address and ZIP code
15 State
Employer's state ID number
16 State wages, tips, etc.
17 State income tax
18 Local wages, tips, etc.
19 Local income tax
20 Locality name
Form W-2 Wage and Tax Statement
Department of the Treasury—Internal Revenue Service
For Privacy Act and Paperwork Reduction Act Notice, see back of Copy D.

Reporting on employee's W-2 (Box 12 Code FF)

Provide annual notice to eligible employees

IMPACT ON PREMIUM SUBSIDIES



- **Employee must notify Marketplace or state-based Exchange about QSE HRA benefit being provided by employer**
- **If cost of "employer coverage" is unaffordable, then NOT ELIGIBLE for subsidized coverage.**

  Second Lowest Silver Plan for Self-Only
  minus 1/12 of QSE HRA benefit
  compared to 9.56% of EE's household income

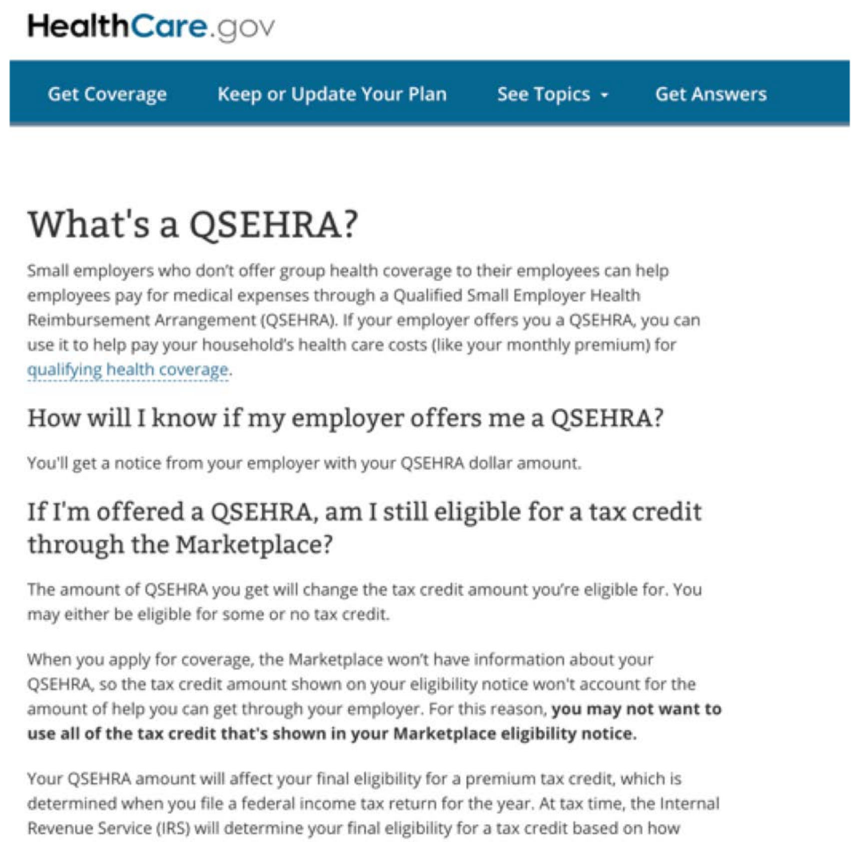
- **If employee receives premium subsidy, then QSE HRA benefit is used to 'offset' the subsidy amount**

IMPACT ON PREMIUM SUBSIDIES

Marketplace application cannot currently adjust eligibility amounts based on a QSHERA.

Individuals with QSEHRA offers (whether they use it or not) should consider adjusting the amount of APTC they elect to reduce chances of having to pay back some or all of the credit when filing their respective federal income tax returns.

Direct your clients that have a QSEHRA to **HealthCare.gov/help/qsehra/** to learn how to adjust their APTC to lower the chance they will have to pay back some or all of their APTC when they file federal income taxes.


HealthCare.gov

Get Coverage | Keep or Update Your Plan | See Topics | Get Answers

What's a QSEHRA?

Small employers who don't offer group health coverage to their employees can help employees pay for medical expenses through a Qualified Small Employer Health Reimbursement Arrangement (QSEHRA). If your employer offers you a QSEHRA, you can use it to help pay your household's health care costs (like your monthly premium) for qualifying health coverage.

How will I know if my employer offers me a QSEHRA?

You'll get a notice from your employer with your QSEHRA dollar amount.

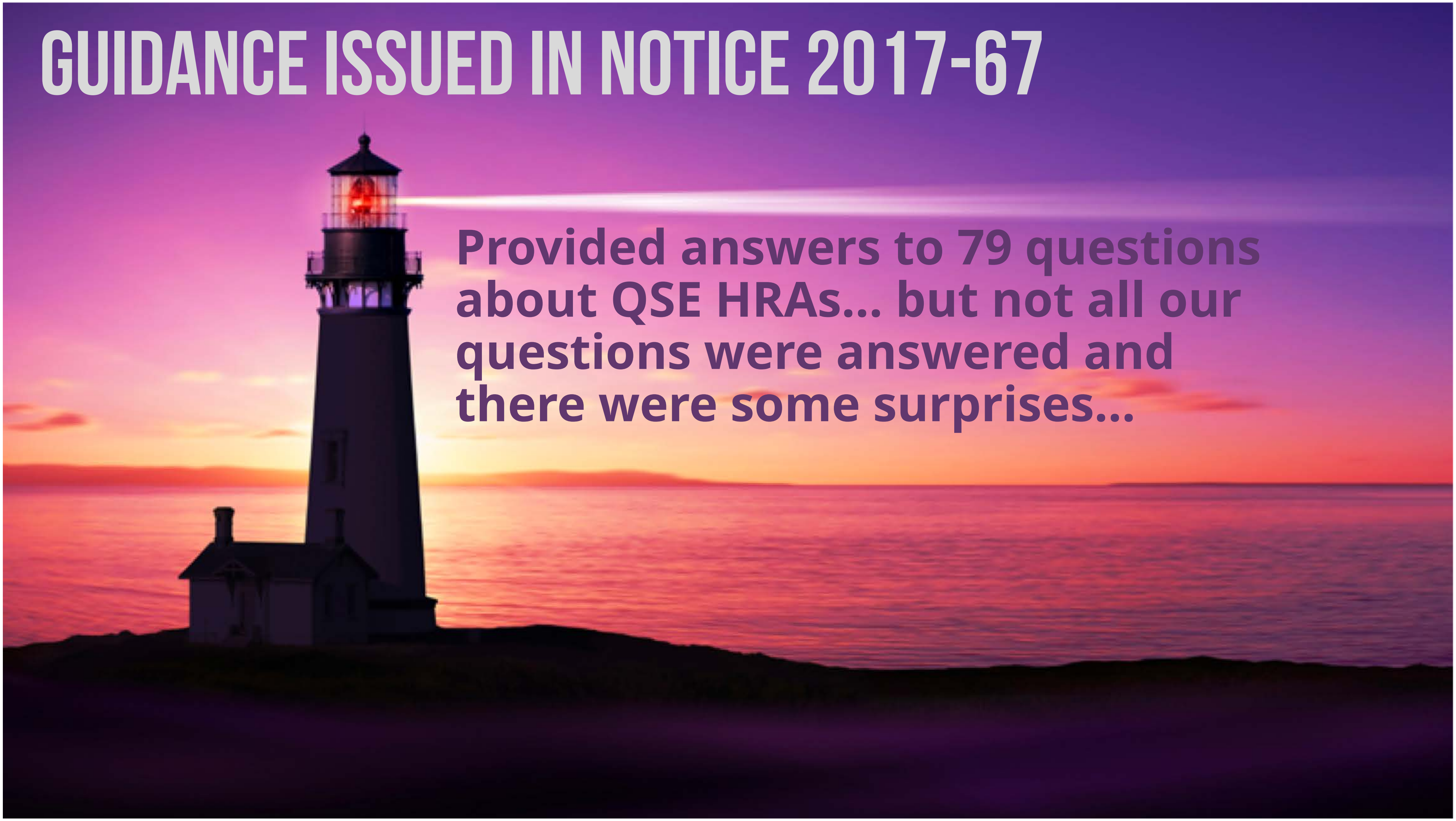
If I'm offered a QSEHRA, am I still eligible for a tax credit through the Marketplace?

The amount of QSEHRA you get will change the tax credit amount you're eligible for. You may either be eligible for some or no tax credit.

When you apply for coverage, the Marketplace won't have information about your QSEHRA, so the tax credit amount shown on your eligibility notice won't account for the amount of help you can get through your employer. For this reason, **you may not want to use all of the tax credit that's shown in your Marketplace eligibility notice.**

Your QSEHRA amount will affect your final eligibility for a premium tax credit, which is determined when you file a federal income tax return for the year. At tax time, the Internal Revenue Service (IRS) will determine your final eligibility for a tax credit based on how


COMPLIANCE QUESTIONS
Is there any clarity?


GUIDANCE ISSUED IN NOTICE 2017-67
Provided answers to 79 questions about QSE HRAs… but not all our questions were answered and there were some surprises…


...BUT CLARITY
CAN BE DECEIVING...

WHO IS AN ELIGIBLE EMPLOYEE?

- Full-time, non-seasonal employee
  - Who is excluded?
    - Part-time: Employee whose customary weekly employment is less than:
      - 35 hours if there are other employees who are part-time and work less than 35 hours
      - Otherwise 25 hours is the threshold of be part-time
    - Seasonal: Employee whose customary annual employment is less than 7 months
- Other allowable limitations (could still offer…)
  - Completed 90 days of service with the employer
  - Have attained the age 25
- Cannot offer to Retirees or Owners: 2% of more shareholders in an “S” Corporation, partners, LLC members, or other self-employed individuals

WHO IS AN ELIGIBLE EMPLOYER?

- Cannot offer health insurance
  - Including dental or vision plans
  - Including HRA rollover amounts or FSA carryover amounts

- Status as non-applicable large employer
  - Determined annually using ACA Employer Shared Responsibility final regulations and its complex formula of full-time and FTE calculation
  - Common ownership and control rules apply

OPERATING RULES

- Must be offered on the same terms to all eligible employees
  - Can vary based on type of coverage (employee only vs family)
  - Must offer same level of benefits, which may mean some get better benefit than others
  - But cannot vary based on number of family members covered
- QSE HRA benefits can be limited to
  - Only reimburse types of expenses
    - Insurance premiums
    - Cost-sharing for medical expenses
    - Certain other medical expenses
  - Up to a maximum amount each month
    - Pro-rated based on the number of months
    - For expenses that exceed the monthly amount, may be reimbursed the difference (up to the monthly amount) the following months (if during same calendar year)

OPERATING RULES

- Benefit amounts should be prorated based on the number of months eligible for newly eligible employees, but will not be limited if employee does not work throughout the year
  - Exception: reimbursement of expenses after termination but during runout period would be limited to prorated annual amount
- QSE HRA may not reimburse for expenses incurred prior to the employee becoming eligible for QSE HRA benefit
- If employee is covered on spouse’s group health plan, then the plan must notify the employee about the potential tax issues if the premiums

DOCUMENTATION

- Employer must provide annual written notice about QSE HRA, including the following:
  - Employee eligibility rules
  - QSE HRA benefits
  - Requirements for expense reimbursements
  - Employee's obligation to maintain minimum essential coverage (and consequences if they fail to do so)
  - Mandated disclosure to Marketplace (or state-based exchange) about QSE HRA
- Employer must also maintain records related to:
  - Expense reimbursement substantiation
  - Proof of Coverage (at least once per year)

WEIRD RULES

Employee cannot
waive QSE HRA benefit
if eligible

A single mistake could
render all reimbursements
under the QSE HRA would be
considered taxable

Health insurance tax deduction
for self-employed individuals
could be lost due to QSE HRA eligibility

OUTSTANDING QUESTIONS

- QSE HRAs required to maintain plan document?
  - If not, how should employers document their rules and compliance obligations?
  - How to avoid potential litigation concerns if exempt from ERISA?
- Required to provide Summary of Benefits & Coverage?
- Are QSE HRAs subject to HIPAA Privacy and Security requirements?
- Are agents creating an issue for the employer, who is subject to the "no endorsement" exception to ERISA outlined in the guidance?

OTHER RECENT CLARIFICATIONS

- Premium Tax Credit material from IRS
  - "If you were provided a QSEHRA, your employer should have reported the annual permitted benefit in box 12 of your Form W-2 with code FF. If the QSEHRA is considered affordable coverage for a month, no premium tax credit (PTC) is allowed for the month. If the QSEHRA is not considered affordable coverage for a month, you may still be eligible for the PTC but you must reduce the monthly PTC (but not below -0-) by the monthly permitted benefit amount.“
- Texas determined this week that their state law that would appear to prohibit arrangements such as QSE HRA’s is preempted by federal law, potentially impacting similar laws in other states

SHOULD YOUR CLIENT IMPLEMENT?

- The answer is complex and unique to every employer
  - Are plans too complicated or managed (Rx, gatekeepers)?
  - Are the networks broad enough to cover everyone's needs?
  - Which is better for the employee?
  - Which option is the best cost for the small business/owner?
  - How would this each option be administered and maintained?
    - What about new employees in a QSE HRA outside of Annual Enrollment?
    - Do special enrollment period rules apply?
  - Are you getting paid for your work?

QUESTIONS

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