

## Understanding EBHRA



Federal law permits the establishment of "excepted benefit health reimbursement arrangement" ("EBHRA") for plan years beginning after December 31, 2019. The following explanation is an overview of the basic rules for establishing an EBHRA:

**Eligible Employer:** An employer is eligible to establish an EBHRA if it offers a group health plan to its employees. An employer cannot offer employees participation in an ICHRA at the same time.

**Funding:** The EBHRA must be funded solely by employer contributions. Salary reduction contributions are not permitted.

**Reimbursable Expenses:** The EBHRA can pay and reimburse for medical care expenses, as defined in Internal Revenue Code ("Code") Section 213(d), but not reimbursement for premium payments for individual medical coverage insurance policies covering the employee or enrolled family members, whether purchased from a broker or through the Marketplace or Medicare). Premiums for dental and vision coverage or limited duration insurance can be reimbursed. For any Plan year, employees can submit claims during a runout period specified by the employer. In addition, employees can be allowed to carryover unused amounts to the next plan year.

**Substantiation Requirement:** For any medical care expense reimbursed by the EBHRA, it must be substantiated. Claims must be substantiated with two items:

- Information from an independent third party describing the service or product, the date of the service or sale, and the amount of the expense; and
- A statement from the participant providing that the medical expense has not been reimbursed and that the participant will not seek reimbursement for the expense under any other health plan coverage.

**Annual Benefit Cap:** The amount of payments and reimbursements from the ICHRA cannot exceed \$1,800 for plan years beginning in 2020. These limits will be increased for CPI cost-of-living adjustments.

**Coverage:** The EBHRA generally must be provided on the same terms to all similarly situated individuals, regardless of any health condition

**Eligible Employees:** A separate group of employees may be viewed as similarly situated individuals are treated differently from other groups if the difference is based on bona-fide classification.

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Since this determination is a facts and circumstances test, examples could include full time versus part time, different geographic location, membership in a collective bargaining unit, date of hire, length of service, current employee versus former employee, and different occupations.

**Income Tax Treatment of ICHRA:** The EBHRA benefit will not count as taxable income.

**Coordination with Health Insurance Premium Tax Credit:** An employee's eligibility for an Excepted Benefit HRA will not disqualify the employee from accessing premium tax credits from an Exchange/Marketplace.

**ERISA:** If the employer is subject to ERISA, the EBHRA will be subject to ERISA.

**COBRA:** If the employer is subject to COBRA, the EBHRA will be subject to COBRA.

**Nondiscrimination Testing:** The EBHRA must meet the nondiscrimination testing requirements under the Internal Revenue Code.

**Establishment Procedures.** To establish an EBHRA, the employer must:

1. Complete the Adoption Agreement and keep a copy of it and the plan document in its files.
2. Execute the corporate resolution and keep a copy in files
3. Use the answers from the Adoption Agreement, complete Summary Plan description and distribute to all eligible employees
4. Have each eligible employee complete an Enrollment Form before participating in the EBHRA for any plan year.
5. Before receiving any reimbursements, each eligible employee must complete and submit a Expense Reimbursement Form

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