Understanding ICHRA

Federal law permits an employer to establish "individual coverage health reimbursement arrangement" ("ICHRA") for plan years beginning after December 31, 2019. The following explanation an overview of the basic rules for establishing and maintaining an ICHRA.

Eligible Employer: Any employer is eligible to establish an ICHRA if does not offer a group medical plan to any employee who is offered participation in the ICHRA.

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

Reimbursable Expenses: The ICHRA can reimburse any eligible medical care expenses, as defined in Internal Revenue Code ("Code") Section 213(d) (including premium payments for individual medical coverage insurance policies covering the employee or enrolled family members, whether purchased from a broker or through the Marketplace). Premiums for dental and vision coverage can be reimbursed, as well as Medicare and Medicare Supplement premiums. 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 ICHRA, 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 reimbursements that can be made from the ICHRA for a plan year is determined by employer. The employer can vary the amount each plan year.

Coverage: The ICHRA generally must be provided on the same terms to a class of employees determined by the employer. However, benefits under an ICHRA are permitted to vary in accordance with variations in the price of an insurance policy in the relevant individual health insurance market based on the age of the eligible employee (or, the ages of the employee's enrolled family members) or the number of enrolled family members. Any such variation must be determined by reference to the same insurance policy with respect to all eligible employees.

Eligible Employees: An employer has a choice of offering an ICHRA to eleven different classes:

- Full-time employees that can be defined under Code Section 105(h) (35 hours or more or Code Section 4980H (30 hours or more);
- Part-time employees that can be defined under Code Section 105(h) (less than 35 hours) or Code Section 4980H (less than 30 hours);
- Seasonal employees that can be defined under Code Section 105(h) (less than 9 months or Code Section 4980H (less than 6 months);

- Employees who have satisfied a waiting period for coverage;
- Non-resident aliens with no US source income;
- Salaried employees;
- Non-salaried employees;
- Employees whose primary site of employees is the in the same rating area;
- Temporary employees; and
- A combination of these ten categories.

A minimum class size requirement applies if an employer offers a traditional group plan to one class of employees and offers an individual coverage HRA to another class of employees. The minimum class size (10 employees if the employer has fewer than 100 employees, 10% of the employer's employees if between 100 to 200 and 20 employees of the employer has more than 200 employees) applies to full-time employees, salaried employees, non-salaried employees and employees whose primary site of employment is the same ratings area.

An employee must be allowed to opt out and waive future reimbursements on behalf of the employee and all dependents eligible for the ICHRA for any plan year. This option must be offered every plan year. At termination of employment, any remaining amounts in the ICHRA must be forfeited or the employee must be permitted to permanently opt out and waive future reimbursement from the ICHRA.

Required Notice: Generally, not later than 90 days before the beginning of the plan year (or, for an employee who is not eligible to participate as of the beginning of the year, the date on which the employee is first eligible), the employer is required to provide a written notice to alert each eligible employee to the following:

The terms of the ICHRA, including the maximum dollar amount made available and other specified provisions.

A specific individual or group to contact for additional information on the ICHRA.

Information related to the individual Exchange special enrollment period (SEP) relating to eligibility to enroll in IMC for a newly eligible ICHRA individual.

The right to opt out of and waive future reimbursement under the ICHRA.

That the premium tax credit (PTC) for coverage in the Exchange may be available (1) if the participant opts out of and waives the ICHRA; and (2) the ICHRA is not "affordable" for purposes of Section 36B (governing premium tax credits and subsidies), as well as other information regarding the PTC.

The obligation to inform any Exchange to which the employee applies for a premium subsidy of the ICHRA's availability and terms.

A statement that it is the responsibility of the participant to inform the ICHRA if the participant or any dependent whose medical care expenses are reimbursable by the ICHRA is no longer enrolled in qualifying IMC. The final regulations require inclusion of additional information for Medicare beneficiaries.

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If the ICHRA is established fewer than 120 days before the beginning of its first plan year, the notice for the first plan year can be provided no later than the date on which the ICHRA is first effective for the participant. This rule applies only with respect to the first plan year of the ICHRA.

Income Tax Treatment of ICHRA: As long as the employee enrolls in a medical plan (through private insurance, the Marketplace,) that qualifies as Minimum Essential Coverage (MEC) for the year, the employee can participate and ICHRA benefit will be nontaxable.

Coordination with Health Insurance Premium Tax Credit: In general, an employee cannot receive a premium tax credit (i.e., a subsidy for coverage through the Marketplace) if the employee is covered under an ICSEHRA that provides affordable coverage. An ICHRA provides affordable coverage if the premium that would be paid by the employee for self-only coverage under the applicable second lowest cost silver plan minus the employee's benefit under the ICHRA does not exceed the stated percentage for 2020 of the employee's household income.

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

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

Nondiscrimination testing: The ICHRA is subject to the nondiscrimination testing under the Internal revenue Code. The maximum reimbursement amount can vary between classes. In addition, the maximum reimbursement amount can vary between age, but only as provided in the under the rules. Employees within the same class and same age parameters must receive the same benefit.) The ICHRA must not be nondiscriminatory in the operation of the plan.

An ICHRA that only reimburses insurance premiums is treated as an insured plan and is not subject to nondiscrimination rules (although health care reform's nondiscrimination rules for insured plans may apply, compliance with those rules is not currently required.

Establishment Procedures. To establish an ICHRA, the employer must:

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