COMPLIANCE BULLETIN

New Law Allows Stand-alone HRAs for Small Employers

HIGHLIGHTS

- Small employers that do not sponsor group health plans may adopt stand-alone HRAs.
- Employees may use the HRAs to pay for health insurance policies and other out-of-pocket medical expenses.
- Specific requirements apply, including a maximum benefit limit and a notice requirement.

IMPORTANT DATES

January 1, 2017

Qualified small employer HRAs may be adopted for plan years beginning on or after Jan. 1, 2017.

March 13, 2017

Small employers have until 90 days after the Act's enactment to provide the employee notice.

OVERVIEW

On Dec. 13, 2016, the 21st Century Cures Act (Act) was signed into law. The Act allows small employers that do not maintain group health plans to establish stand-alone health reimbursement arrangements (HRAs), effective for plan years beginning on or after Jan. 1, 2017. This new type of HRA is called a "**qualified small employer HRA**."

Due to the Affordable Care Act (ACA), most stand-alone HRAs have been prohibited since 2014. This new law creates a special exception for small employers that are not subject to the ACA's employer shared responsibility rules. Instead of offering a group health plan, small businesses may use a qualified small employer HRA to reimburse employees' out-of-pocket medical expenses, including their premiums for individual health insurance coverage, on a tax-free basis.

ACTION STEPS

Small employers that do not sponsor group health plans may want to consider implementing a qualified small employer HRA to help their employees pay for out-of-pocket medical expenses. Because there are specific design requirements for these HRAs, including a maximum benefit limit and an employee notice, small businesses should work with their advisors to make sure their HRAs are compliant.

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ACA Reforms

HRAs are employer-funded arrangements that reimburse employees for certain medical care expenses on a tax-free basis, up to a maximum dollar amount for a coverage period. The ACA includes market reforms that limit the availability of HRAs, beginning in 2014. Under these reforms, most stand-alone HRAs have been prohibited. A stand-alone HRA is an HRA that is not offered in conjunction with a group health plan.

However, the Act creates an exception to this prohibition for qualified small employer HRAs.

Beginning in 2017, small business owners have a new benefit option available to them—they can contribute to a stand-alone HRA instead of offering a group health plan.

Effective Jan. 1, 2017, an eligible employer may offer a stand-alone HRA without incurring penalties under the ACA if the HRA meets the requirements for a **qualified small employer HRA**. This type of HRA can be used to help employees pay for their own health insurance policies and reimburse other out-of-pocket medical expenses.

Qualified Small Employer HRA

Eligible Employers

To be eligible to offer a qualified small employer HRA, an employer must meet the following two requirements:

1. The employer is not an applicable large employer (ALE) that is subject to the ACA's employer shared responsibility rules. In general, this means that the employer must have **fewer than 50 full-time employees, including full-time equivalents**.
2. The employer does not maintain a group health plan for any of its employees.

HRA Design Requirements

Like all HRAs, a qualified small employer HRA must be funded solely by the employer. Employees cannot make their own contributions to an HRA, either directly or indirectly through salary reduction contributions. In addition, the following requirements apply to qualified small employer HRAs:

Maximum Benefit	• The **maximum benefit** available under the HRA for any year cannot exceed **$4,950** (or **$10,000** for HRAs that also reimburse medical expenses of the employee's family members). • These dollar amounts are subject to adjustment for inflation for years beginning after 2016. • The maximum dollar limits must be prorated for individuals who are not covered by the HRA for the entire year.

Eligibility and Benefit Rules	• The HRA must be provided on the **same terms to all eligible employees** except: o The maximum benefit may vary based on age and family-size variations in the price of an individual policy in the relevant individual health insurance market; and o The HRA may exclude certain categories of employees, including collectively bargained employees, employees who are part time or seasonal, employees who have not completed 90 days of service, employees who are younger than age 25 and non-resident aliens without earned income from sources within the United States.
Reimbursements	• HRA payments or reimbursements must be limited to medical expenses (as defined in Tax Code Section 213(d)) incurred by the employee or the employee's family members, after the employee provides proof of coverage. • This would include, for example, premiums for individual health insurance coverage and other out-of-pocket medical expenses.

Employee Notice

An employer funding a qualified small employer HRA for any year must provide a **written notice** to each eligible employee. This notice must be provided **within 90 days** of the beginning of the year. For employees who become eligible to participate in the HRA during the year, the notice must be provided by the date on which the employee becomes eligible to participate.

Transition Relief
Employers will not be treated as violating the notice's timing requirements if the notice is provided no later than 90 days after the Act's enactment, or **March 13, 2017**.

The notice must include the following information:

- ✓ The employee's maximum benefit under the HRA for the year;
- ✓ A statement that, if the employee is applying for advance payment of the premium assistance tax credit, the employee should provide the Exchange with information about the HRA's maximum benefit; and
- ✓ A statement that, if the employee is not covered under minimum essential coverage for any month, the employee may be subject to a penalty under the ACA's individual mandate and reimbursements under the HRA may be includible in gross income.

If an employer fails to provide this notice for a reason other than reasonable cause, the employer may be subject to a penalty of **$50 per employee** for each failure, up to a maximum annual penalty of $2,500 for all notice failures during the year.