IHRA Rule Changes & How They Affect Your Business

Last year, the Trump Administration announced that it was exploring changes to Healthcare Reimbursement Account (HRA) regulations in an effort to expand opportunities for businesses to use HRAs to reimburse employees for their own purchase of individual health insurance. The Department of Labor released final rules on these individual HRAs, or IHRA, in June, expected to take effect January 1, 2020.

A little context: A version of this "defined contribution" approach is in use today under a little-known program called the "Qualified Small Employer HRA", through which small employers (<50 lives) can fund tax deductible HRA contributions for their employees, who then are reimbursed through the HRA for their individually purchased medical insurance. Decisely has long been a leader in QSEHRA solutions through its unique solution "Decisely Individual for Business", now expanding to include the new IHRA options.

What's new for 2020 under the new Individual HRA rules? All *employers of any size now* will have the same opportunity to use this defined contribution/individual medical insurance purchase option.

If you're not interested in reading all 500 pages of the new rules, Part 1 of this white paper covers the new rule, and how it differs, and Part 2 addresses the strategy and implications for businesses that might consider an IHRA approach.

Part 1: What are the New IHRA Rules?

Defining an Individual Coverage HRA (IHRA)

- An IHRA is an Employer funded bank account which reimburses the Employee for some (or all) of their individual purchase of medical insurance. The employer funds tax deductible contributions to their HRA and the employee can reimburse himself for premiums of health insurance purchased on his own, either through the Exchanges (Healthcare.gov) or directly from a private insurer. There is no maximum on IHRA contributions by the Employer.
- The Individual Health Insurance purchased must be Affordable Care Act (ACA) qualified medical insurance (short term insurance doesn't qualify), or Medicare insurance (Part B-D, and Medicare Supplement) for those eligible.
- In addition to Employee contributions, the employer can decide to contribute funds for the employee's dependents and family to the IHRA.
- Importantly, the employer may vary contributions to the IHRA by class of employees (full-time, part-time, seasonal, salaried, hourly, temporary employees, seasonal).
- In addition to traditional employment classes, IHRA adds a geographic "Class" where employers may provide vary contributions by Regions. Healthcare costs and

premiums vary widely by region – New York and California are more expensive than Georgia and Tennessee. The "regional" class option helps address cost variability versus "one size fits all" contributions, where the employer can put those in higher cost insurance environments at a relative disadvantage to their peers.

- An IHRA can be set up like a traditional Health Savings Account -- the employer can choose to roll-over unused amounts into the following year or set it up as "use it or lose it" HRA.
- Large employers (usually those over 50 full time employees) are required to offer "affordable" health coverage under the Affordable Care Act. An IHRA will meet ACA requirements for an Employer if their IHRA contribution meets or exceeds ACA "affordability" requirements.
- Just like an Employer offering "affordable" group insurance means that an employee would not be eligible for tax credits on the ACA Exchanges, if an Employer's contributions to the IHRA meet "affordability" requirements, an employee would not eligible for subsidies on the Exchange (the employee can't "double dip – taking IHRA funded reimbursement AND Exchange subsidies).
- IHRA contributions and resulting reimbursements to employees aren't taxable wages to W-2 employees.
- The new regs also have specific notice requirements to employees (and the new regulations handily offer safe harbor examples of these notices).

No Nos of IHRAs

- Employers can't offer a traditional group health plan AND an IHRA to the same class of employees – they must choose one or the other. Employers can, however, offer a traditional group health plan to one Class (full-time W-2 employees, for example), and an IHRA for other Classes (1099s or contractors). In this challenging employment environment, this can be a great tactic for attracting and retaining both long-term, contracted and temporary staff.
- An IHRA cannot be used for reimbursing deductibles or other out of pocket medical expenses (however, the new Excepted Benefits HRA can).
- There are minimum employee class sizes. Class size is typically 10% of that specific class of employees. For example, if an employer has 100 employees, a minimum of 10 employees would have to be in a specified class.
- Contributions per employee within a Class must be consistent. For example, all full-time employees are funded $3,000, while all part time employees are funded $500 in their IHRA. Geographically, all full-time employees in New York receive $4,000, all full time Employees in Tennessee receive $3,000.

Employers can't use an IHRA to reimburse short term medical, dental, or vision insurance. Which brings us to another "new" HRA: the Excepted Benefits HRA.

Excepted Benefits HRA (EBHRA)

The EBHRA is a supplemental HRA designed to fill in around the edges of the IHRA. It provides all the features and benefits of the traditional HRA as well as allowing the employee to use funds for dental and vision insurance reimbursement. Some specifics:

- The employer (not employee) funds the EBHRA annual contribution up to a max of $1,800 annually. This contribution is tax deductible.
- EBHRA cannot be used to fund group health or Medicare, but can reimburse premiums for dental, vision, or short-term limited duration insurance, as well as out of pocket medical expenses like deductibles and co-pays, like a traditional HRA.
- The EBHRA must be offered in conjunction with a group health plan, *but there is no requirement for the employee to enroll in a group plan*. An employee can decline to participate in the company's group insurance program (for example, if he/she is covered under a spouse's plan, or on Medicaid) but still can benefit from the EBHRA. This is a big difference than "traditional" HRAs where which requires participation in the group health insurance plan to have a Healthcare Reimbursement Account.

So: now that we've covered the basics of the new Individual HRA law, let's learn how this affects employers in "Part 2: Strategies to Leverage IHRAs for Employers".

Part 2: Strategies to Leverage IHRAs for Employers

In Part 1, we explored what the new Individual HRA is, and what it is not. To recap, the new IHRA ruling:

- Expands options to employers to offer medical insurance to more employees, effective January 1, 2020 through a new form of an HRA, called an Individual HRA (IHRA).
- An IHRA allows any employer (regardless of size) to set up a Defined Contribution approach through a new form of Health Reimbursement Account for Employers to reimburse Employees for their individually purchased health insurance.
- IHRA contributions are tax deductible (like group health insurance premiums).

- Contributions must be consistent within a "class", like full time, part time, or contractors. Contributions can also vary by region to take into account regional cost differences.
- If employee contributions are sufficient to meet the ACA standards, an IHRA would qualify as offering "affordable" health insurance for a large employer (generally those over 50 full time employees).

Why does this new option matter? According to the Kaiser Family Foundation (2018), between 2010 and 2018, the number of firms offering medical insurance to their employees declined – across the board, but the dip was more drastic in the small market. For 3-9 employees, 59% in 2010 to 47% in 2018, 10-24 employees, 76% to 64%, 25-49 employees 92% to 71%, and 50-200, 95% to 91%.

At Decisely, we welcome the expansion of business options, as our research across over 8,000 small employers clearly shows only about half of small businesses offer any medical insurance. Given that small businesses employ over 40M people in the U.S., this means many don't have access to employer sponsored insurance. Historically, the Qualified Small Employer Health Reimbursement Account (QSEHRA) was a great option for small businesses and start-ups under 50 employees, but under the new ruling, the IHRA may also now be an attractive option for small and mid-sized businesses. The new IHRA ruling is expected to generate more employer interest in exploring this defined contribution approach as simpler, and more affordable alternative to traditional small group insurance.

Expansion of options for employer supported healthcare, either through group insurance, or expanded funding options like IHRAs, simply creates more options for these small businesses and their employees.

Why might this be a good option for some businesses?

First, business owners fund what they can afford, and healthcare for many businesses is a significant financial investment. Many small and mid-sized businesses can't afford to contribute to employee healthcare. For example, the average employee-only premium cost in the U.S. is $6,900 per employee. If an employer is required to contribute 50% of this cost to get group coverage for employees (a typical standard), $3,450 *per employee* may be more than an employer can take on. The employer may be able to afford a lesser amount, perhaps $1,000 - $2,000, which would be a known amount that a business can budget for, and not be surprised by major renewal cost increases year over year.

Second, many small and mid-sized business may struggle to meet the participation requirements of a medical carrier. For example, a carrier, as a condition of quoting medical insurance, may typically require a 50% to 75% participation rate of all eligible employees for the group to qualify for their coverage. Why? Greater participation avoids adverse

selection of the sickest or chronic condition employees taking medical; participation by the healthier employees offsets their less fortunate peers' higher medical cost.

Third, an IHRA is a simple way to create and offer "employee benefits", particularly if a business has never offered benefits before – the burden is upon the employee to shop for and purchase their own medical insurance through Exchanges and direct with Carriers, and the employer simply funds the HRA where the employee gets full or partial reimbursement as a benefit of continued employment. If the same employer can package together voluntary dental, vision, life insurance and other benefits with the IHRA reimbursement of medical, that's a pretty easy to administer program to offer employees without a lot of Employer administration, time and effort.

Fourth, the IHRA addresses the employer's need to offer *"something"* material beyond the paycheck to attract and retain employees, as well as do the right thing in helping them obtain medical insurance and other benefits. Research shows that 50% of employees without benefits would move to a new job WITH benefits; those employers not offering any benefits are at a major disadvantage in keeping talent. We hear constantly recruiting and keeping talent is a key challenge for small business; an IHRA can be a cost-effective, and easily administered means of doing so.

What are Some of the Things You Need to Consider?

First, the timing. Offering an IHRA means your employees will buy their benefits on the Exchanges or directly from the Carriers. Open enrollment for individual medical generally runs 11/1-12/15 each year for an effective date of January 1 for coverage – you will need to implement an IHRA, and communicate to your employees in time for them to participate in the Individual Open Enrollment period. Practically, you need to make your decision in September at the latest to offer an IHRA. You can start up an IHRA mid-year, well in front of the annual individual enrollment cycle.

Second, what's your contribution strategy by Class of Employee? Keep in mind you can have different contribution strategies by type of Employee, but it needs to be consistent within a Class (Full Time, Part Time, Contractor), and the rules have "minimums" for Class size (generally, a Class needs to be 10% of more of your total population). If you are a "Large Employer" (generally those above 50 Full Time Equivalent employees), and you want your IHRA to qualify as "Affordable" coverage to satisfy ACA requirements, your contribution strategies and amounts need to meet or exceed that "affordable" contribution hurdle (just as if you were offering traditional group insurance and contributing towards that). For more info who qualifies as a "Large Employers," visit the IRS website.

Third, what additional benefits (Dental, Vision, Life, Accident, Disability, Retirement, etc.) do you want to offer? Are you willing to fund some of these premiums? Perhaps you can add traditional group plans. Want to offer other plans, but don't want to partially fund them?

Those are called Voluntary Programs. How will they be offered alongside your IHRA? Some companies can package your IHRA alongside group or voluntary "other" benefits, others may require a separate enrollment and administration process.

Fourth, what's the cost and set up for the IHRA and how will you administer it? Generally, you have to pick an IHRA administrator (or find one pre-packaged into a fully integrated benefits offering that includes voluntary benefits, benefits enrollment and communication tools and processes), and you can expect some set up fees and ongoing IHRA fees. Generally, annual IHRA fees will run between $50 and $100 per employee paid for by Employer, in addition to whatever fees a Broker or Agent may charge for helping to create and manage your IHRA program.

One question that comes up is "why would my broker or agent charge a fee" in addition to the IHRA administration fees to help me create an IHRA Program for my employees? The simple answer is most brokers/agents are paid by standard commissions on the group medical insurance it places on behalf of the Employer-client. Typically, that is 3-5% of the premium, and represents 60-70% of a broker's total compensation. If your employees are buying Individual Health Insurance from the Exchange or direct from Carriers (vs. through your Broker/Agent), then the revenue to support working with you on an IHRA-led benefits program, enrollment, support, etc. is drastically reduced to your broker / advisor.

The clock is ticking, as employees will need to enroll in an individual plan during the 2019 open enrollment period (November 1, 2019 - December 15, 2019. Once enrolled, they may participate in an employer-funded Individual Coverage HRA for January 1, 2020. In short, employers need to act fast, so employees find their individual medical insurance if they don't already have it.

Good news for all employers, but especially small employers!

Decisely, a leading champion of small business benefits and HR technology solutions, solves for small business challenges through its industry leading s Decisely Individual for Business solution, delivering today on the promise of IHRA, traditional group insurance, and Association Health & Retirement Plans for Associations and Franchisees nationally.