Employee Benefit Adviser

IRS clarifies integrated HRA rules

By: Alden J. Bianchi
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Issued at the end of last year, Notice 2015-87 provided detailed guidance on a host of topics. The notice has been referred to colloquially in some quarters as the "pot luck" notice. Among other things, the notice, in Q&A 4, clarifies the circumstances under which a Health Reimbursement Arrangement (HRA) will be treated as "integrated" with a group health plan where the HRA covers spouses and dependents. This is important because an HRA that is not integrated—i.e., a "stand-alone" HRA—will trigger penalties under certain of the Affordable Care Act's insurance market reforms. As is often the case, however, while clarifying some issues, the notice raised other issues that practitioners and agency representatives are now addressing, and which are the subject of this post.

According to Notice 2015-87, Q&A 4, an HRA is integrated with an employer's group health plan coverage for purposes of the application of the ACA insurance market reforms "only as to the individuals who are enrolled in both the HRA and the employer's other group health plan."

Thus, the level of coverage that an employee elects under an integrated HRA, i.e., self-only, self + 1, family, etc., must match the level of coverage under the group health plan with which the HRA is integrated. While the concept seems simple enough, the text of the notice is less than clear as to *which* group health plan the HRA must be integrated with and the timing of the integration of spouse and/or dependent coverage. At a recent bar forum, representatives of the IRS and the Treasury Department (who were speaking in their individual capacities and not in any official capacity) offered their opinions on these issues and the intent of Q&A 4.

Background

At issue in Notice 2015-87, Q&A 4, is the application of the ACA annual dollar limit prohibition and preventive services requirement to HRAs. The issue was first raised (but not answered) in the preamble to the 2010 interim final regulations on the subject of lifetime and annual limits. The regulators subsequently settled the matter in Notice 2013-54, which established standards that, if satisfied, would qualify an HRA as "integrated" with a group health plan. An integrated HRA is deemed to piggy-back on the underlying group health plan's coverage and other features for purposes of complying with the ACA insurance market reforms.

Notice 2013-54 was silent on the matter of *who* must be covered under the group health plan and the HRA. This question is raised in Notice 2015-87, Q&A 4, which asks:

"May an HRA available to reimburse the medical expenses of an employee's spouse and/or dependents (a family HRA) be integrated with self-only coverage under the employer's other group health plan?"

The answer is "No." But the balance of the answer does not align with the earlier notice in the following instances:

· Notice 2013-54 says that an employee must have other group health plan coverage, sponsored *either* by his or her employer or a family member's employer, when amounts are credited to the employee's HRA account. Notice 2015-87 seems to say the integrated coverage must be maintained by his or employer.

· Notice 2015-87 also says that in order for a family member's expenses to be reimbursed from the employee's HRA account, the family member must also have integrated coverage. The notice posits that the HRA can be "structured so eligibility for expense reimbursement will expand automatically when the family member has integrated coverage." Under Notice 2013-54, the employee must be enrolled in group health plan coverage when the employer credits amounts to the HRA. But under Notice 2015-87, it does not appear that the family member need be enrolled when the employer credits the HRA. For example, the employee could build up an HRA balance while enrolled in self-only coverage; he or she might subsequently switch to family coverage. This suggests that there is a different integration rule for employees than for family members—i.e., that a family member must have integrated coverage when his or her medical expense is incurred and not necessarily when the amounts used to reimburse the family member's expenses were credited to the employee's account.

As to the first bullet point, the government representative said that coverage under another group health plan of a different employer would qualify the HRA as integrated. They pointed out that this is the rule adopted in final regulations issued Nov. 18, 2015. The rules to which the government representatives refer are at Treas. Reg. §§ 54.9815-2711(d)(2)(i)(B) (governing plans that fail to provide minimum value) and 54.9815-2711(d)(2)(ii)(B) (governing plans that do provide minimum value). By way of example, Treas. Reg. § 54.9815-2711(d)(2)(i)(B) provides that an integrated HRA exists where:

"The employee receiving the HRA or other account-based plan is actually enrolled in a group health plan (other than the HRA or other account-based plan) that does not consist solely of excepted benefits, *regardless of whether the plan is offered by the same plan sponsor*."

As to the second bullet point, the government representatives offered an eminently reasonable approach: at no point should an employee, spouse or dependent be covered by the HRA and not by the employer's or other group health plan. Therefore, it appears that plan administrators will not be required to track HRA contributions to ensure that benefit payments to family members are being made from contributions credited to the HRA at a time during which the family member was actually covered. Though the matter of the impact of COBRA was not discussed, it appears that an employer could not offer a separate COBRA election for the integrated HRA, unless the employer maintained, and the HRA is properly structured as, a retiree HRA.

Notice 2015-87, Q&A 4, also recognizes the need for, and furnishes, transition relief under which Treasury and IRS will not treat an HRA available for the expenses of family members not enrolled in the employer's other group health plan for plan years beginning before Jan. 1, 2016, as failing to be integrated with an employer's other group health plan for plan years beginning before Jan. 1, 2016 (or for plan years beginning before Jan. 1, 2017 where the HRA and group health plan would otherwise be integrated based on the terms of the plan as of Dec. 16, 2015) "solely because the HRA covers expenses of one or more of an employee's family members even if those family members are not also enrolled in the employer's other group health plan." Thus, for plans with calendar year plan years, the rules governing HRA-coverage of spouses and dependents will not take effect until the 2017 plan year. As a result, there is some time for the regulators to clarify the questions raised above.