

President Obama Signs the '21st Century Cures Act' Into Law



Executive Summary

In a surprise move that offers welcome help for small employers, the President has signed legislation that eliminates an Affordable Care Act (ACA) restriction that precluded employers from paying for individual coverage. Specifically, the law nullifies the ACA's \$100 per-person-per-day penalty that applied if an employer fails to integrate their HRA with a Qualified Group Health Plan.

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Although a helpful change, the law only offers limited relief. The Cures Act will only permit entities that are NOT applicable large employers (ALE, as defined in the ACA) to pay for individual coverage. Also, even when permitted, special rules apply caps and conditions on the available health coverage that can be purchased through an HRA. Perhaps most notably, a non-ALE that voluntarily chooses to sponsor a group health plan that provides Minimum Essential Coverage (MEC) to employees is automatically blocked from funding someone's individual coverage using an HRA. (Presumably this rule is in place to help protect the Exchanges from suffering adverse risk-shifting if employers were permitted to use an HRA to selectively entice expensive benefit users to exit their group health plans.)

Details

On Tuesday, December 13, 2016, President Barack Obama signed the [21st Century Cures Act](#), (“Cures Act”) into law. Most of the nearly one-thousand page law deals with funding for Mental Health initiatives (including Alzheimer’s disease and certain forms of cancer). Importantly though, the law grants small employers (employers with less than 50 FT and FTE employees, non-ALEs) greater flexibility in offering a health program to their employees via a Health Reimbursement Arrangement.

Welcome News for Small Employers

Small Employers Can Implement and Offer Individual Health Reimbursement Arrangements (HRAs) to their Employees

Beginning on January 1, 2017, employers can provide “direct reimbursement” of premiums paid by employees for major medical coverage, individual or family, and for other qualified health care expenses. This provision essentially “nullifies” IRS Notice 2013-54, which made such reimbursement (i.e., employer payment plans and stand-alone HRAs) illegal.

However, the reimbursement opportunity is narrowly-tailored, and, in order for employers to benefit from the provisions of the Cures Act, employers must satisfy all of the following criteria:

- **Eligible Small Employer:** The employer must **have less** than 50 Full-time and Full-time Equivalent Employees (**not** be classified under the ACA as an “Applicable Large Employer”); and the employer must **not** offer group-sponsored major medical coverage, that qualifies as Minimum Essential Coverage (MEC) to any employee.
- **Eligible Employee:** Any employee collecting an HRA reimbursement must be enrolled in a plan that is MEC from the individual market, or another source. An eligible employee is defined as an employee who has satisfied a 90-day waiting period.
- **HRA Funding:** The HRA must be funded exclusively with employer contributions. (This reinforces the long-standing IRS requirement that HRAs cannot include any employee-pre-tax or after-tax dollars).
 - **Maximum benefit:** Annual HRA reimbursements are capped at: \$4,950 for an individual (employee only) and \$10,000 for an employee with family coverage (employee plus one or more dependents). Note that these amounts will be indexed each year based on the Consumer Price Index +1%. Payments from an HRA must be available to all employees, on the same terms and conditions. However, the HRA annual benefit limit may vary depending on cost of major medical coverage purchased by the employee from the individual market. The cost of coverage may also vary based on the employee’s age and/or the age of the employee’s family members, and the tier of coverage selected by the employee (single/family).
 - **Eligible expenses for reimbursement under an HRA:** Premiums for medical coverage for an employee and/or the employee’s family purchased from the individual market, as long as coverage is deemed to be MEC, in addition to qualified healthcare expenses under IRC Sec. 213(d).
 - **Proration of annual benefit in an HRA:** If an employee is not eligible for an HRA for the entire plan year (12 months), the maximum annual contribution to an HRA is prorated based on the number of months the employee is eligible to participate in the HRA.

Small employers offering HRA reimbursement should also be aware of the following Cures Act provisions:

- **Disqualification from premium or out-of-pockets subsidies in an Exchange/Marketplace:** Any employee that receives an HRA contribution may affect his or her premium tax credit eligibility for State Exchange or Federal Marketplace coverage (i.e., a subsidy) based on a formula calculation that assesses affordability factors. In a nutshell, if the individual-market coverage is considered

unaffordable after applying the statutory formula (after factoring the employer's HRA contribution), the employee's premium tax credit would be reduced by the actual amount of the employer's HRA funding.

- **Notice requirements:** Employers that wish to offer an HRA must provide at least 90-days advance notice to eligible employees prior to the beginning of the year in which the HRA will be offered and subsequently for every year that the HRA is offered. In addition, the employer must also comply with all of the following:
 1. Notice must also be provided to all employees who become eligible to participate in the HRA at a later time during the year.
 2. The notice shall contain all of the following:
 - The maximum annual HRA benefit.
 - Any employee that wishes to receive the employer's HRA contributions must have MEC coverage in order to submit qualified medical expenses for reimbursement. If the employee receives a reimbursement from the HRA and the employee does not have MEC for any month, the employee may be subject to tax under IRC Section 5000A, and the amount reimbursed by the HRA is included in the employee's income.
 - If the employee requests reimbursement from an HRA for medical premiums paid for themselves and/or their family members, the employee must properly substantiate that the expense has been incurred.
 - If an employee chooses to collect the employer's HRA and use funds to obtain coverage via the State Exchange, the employee must inform the Exchange about HRA reimbursement eligibility (this may, as described above, reduce the likelihood of that individual receiving a subsidy).
- **Reporting requirements:** Participating Employers must report the HRA amount on their employees' Form W-2s.

Next Steps

Small employers (non-ALEs) facing rising healthcare medical costs, and small employers that wish to begin offering benefit coverage to their employees, should carefully compare the financial advantages and potential disadvantages of offering an HRA to their employee population over traditional small group medical plans. Employers considering replacing their existing small group medical plans with an HRA should note that HRAs will be funded exclusively with employer contributions, and that employees will no longer be able to contribute on a pre-tax basis towards the cost of their medical coverage purchased from the individual market, therefore increasing an employer's payroll tax liability.

The Cures Act contains a variety of other provisions affecting plan sponsors that we will address in future HUB International publications. Meanwhile, we will also closely monitor the implementing regulations for HRA usage under the Cures Act which are anticipated in the coming months. We also encourage employers to contact their local HUB representative for further information regarding this matter.

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