



Employers Can't Avoid ACA Mandates and Penalties by Offering HRAs to Pay for Individual Policies

Health Reimbursement Arrangements (HRAs) have become more popular with employers in recent years. HRAs are Internal Revenue Service-sanctioned employer-funded and tax- advantaged accounts, established by employers, to pay the health insurance premiums or out-of-pocket medical expenses of employees. The accounts enable employers to cap their expenses and liabilities with a defined contribution approach to health benefits.

On January 24, 2013, the federal government released guidance on whether or not employers would be allowed to offer HRAs, tied to individual health insurance policies, to avoid penalties imposed by the Affordable Care Act (ACA) for not offering qualified, affordable health coverage. Under the ACA, employers who do not meet the requirements of the law face a penalty of up to \$3,000 per employee per year.

The Departments of Labor, Health and Human Services, and the Treasury collectively issued a set of [FAQs](#) that clearly outlines the rules regarding HRAs. Section 2711 of the Public Health Service Act (PHS Act), as added by the Affordable Care Act, distinguishes between HRAs that are "integrated" with a group health plan from those that are not integrated, so-called "stand-alone" HRAs. **Employers cannot replace group plans with HRAs, tied to individual plans, without facing stiff penalties for violating the ACA.**

This policy clarification is not good news for private exchanges looking to replace employer- provided group plans by replicating the business model used by Extend Health or its competitors in the Medicare market. These exchanges have sought to replace employer- sponsored group plans with HRAs, tied to individual Medicare Advantage and Medicare Supplement plans. On January 31, 2013, Towers Watson, the parent company of Extend Health, introduced OneExchange to provide "employers both private and public exchange-based health insurance options for their full- and part-time workers, and for all retirees." This strategy has significant drawbacks, whether it is applied to retiree groups or active employee groups (please see related article [here](#)).



Employers currently providing group health plans but considering a move to HRAs, linked to individual health insurance policies, should first consult legal counsel to ensure ACA compliance.

Contact:

Mark Witcher at mwitcher@ktpadvisors.com or (401) 490-9351

Barry Eyre at beyre@ktpadvisors.com or (401) 490-9365

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