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Stand-Alone HRAs Receive Exemption from Annual Limit Waiver Requirement

HHS issued supplemental guidance that exempts certain stand-alone HRAs from having to apply for waivers from the PPACA restrictions on annual limits for plan years beginning before January 1, 2014.

Background

The Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (collectively, PPACA), prohibits lifetime dollar limits on “essential health benefits” for plan years beginning on or after September 23, 2010. Plans may impose “restricted” annual dollar limits on essential health benefits until the 2014 plan year. Beginning in 2014, even restricted annual dollar limits are not permitted.

In June 2010, the Departments of the Treasury, Labor, and Health and Human Services (collectively, the Departments) issued interim final regulations regarding the annual dollar limits. (See our July 2, 2010 [For Your Information](#).) The preamble to the regulations discussed the extent to which annual dollar limits would apply to health reimbursement arrangements (HRAs). The preamble describes HRAs as account-based plans that “typically consist of a promise by an employer to reimburse medical expenses for the year up to a certain amount, with unused amounts available to reimburse medical expenses in future years.”

BUCK COMMENT. *The restrictions on annual dollar limits will not apply to an HRA if the maximum amount of reimbursement reasonably available to a participant is less than 500% of the value of the coverage. An HRA that does not provide for the carryover of unused balances into subsequent years will satisfy this condition and thus will not be subject to the rules on dollar limits.*

The preamble states that rules regarding annual limits do not apply to an HRA that only covers retirees or to an HRA offered in conjunction with a non-account group health plan if the non-account group health plan complies with the PPACA rules regarding annual and lifetime dollar limits. The Departments solicited comments regarding the application of the rules on annual dollar limits to “stand-alone HRAs”, i.e., HRAs that are not integrated with a non-account group health plan.

BUCK COMMENT. *Employers sometimes use stand-alone HRAs to help provide funding for retiree health premiums. Such arrangement would not be subject to PPACA if it is a retiree-only plan. Other employers may be considering using stand-alone HRAs to help employees purchase Exchange coverage in 2014.*

In September 2010, the Department of Health and Human Services (HHS) issued subregulatory guidance describing a process through which a group health plan or health insurance issuer may request a waiver from the

annual dollar limit restrictions. To qualify, the plan or coverage must have been offered before September 23, 2010 and must establish that compliance with the regulations would result in a “significant decrease in access to benefits” or a “significant increase in premiums.” (See our September 17, 2010 [For Your Information.](#))

Supplemental Guidance

In August 2011, HHS released additional [supplemental guidance](#) relating to stand-alone HRAs and the waiver program. The new guidance states that stand-alone HRAs that existed before September 23, 2010 will not need to apply for a waiver or waiver extension from the annual limit restrictions for plan years beginning on or after September 23, 2010 but before January 1, 2014. It further notes that if an employer maintains other group health plan coverage, regardless of whether an HRA is offered in conjunction with this other coverage, then the plan must either satisfy the annual limit requirements or obtain a waiver.

BUCK COMMENT. *Because a waiver of the annual dollar limit rules only applies to stand-alone HRAs that were established before September 23, 2010, any newly established stand-alone HRA, that is not a retiree-only plan generally would be required to meet the applicable thresholds set out in the interim final regulations. Alternatively, an HRA that does not provide for the carryover of unused balances to subsequent years also may not need to meet the annual limit requirements. Finally, it appears that once group health plans are prohibited from having any annual dollar limits on essential health benefits in 2014, stand-alone HRAs may not be able to provide for carryovers.*

Stand-alone HRAs still must comply with the record retention and annual notice requirements as set forth in previous guidance. (See our July 19, 2011 [For Your Information.](#)) An updated model notice, tailored specifically for HRAs, is included in the [technical instructions for the waiver process](#). According to the updated technical instructions, an HRA that has already received a waiver and issued an annual notice using the language printed in previous guidance does not need to re-issue that notice using the new language.

Conclusion

Stand-alone HRAs in existence before September 23, 2010 will be exempt from the annual limit waiver requirements if they satisfy the record retention and annual notice requirements of the waiver rules.

Buck’s consultants are prepared to assist you with complying with the applicable notice requirements and understanding how this new guidance might impact your plans.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.