

Stand-Alone HRA May Violate the Health Care Reform Law Without an HHS Waiver

The health care reform law severely restricts the ability of group health plans to impose annual dollar limits on benefits. Surprisingly, the new restriction applies to some health reimbursement arrangements (HRAs), even though virtually all HRAs have annual limits. Specifically, the new restriction applies to a "stand alone" HRA unless the HRA secures a waiver from the Department of Health and Human Services (HHS). The waiver application must be filed no later than 30 days before the start of the first plan year for which the new rules apply, so the application deadline for a calendar year plan is December 1, 2010. An HRA that is integrated with another health plan - such as a high deductible insured plan - is exempt from the new restriction and can continue to limit annual reimbursements.

The New Restriction on Annual Limits

The new health care reform law severely restricts the use of annual dollar limits on benefits paid by group health plans. Effective for plan years beginning on or after September 23, 2010, a group health plan - even if it is a grandfathered plan - can impose only "restricted annual limits" on benefits that are "essential health benefits." (See below for the meaning of this term). For example, annual limits on the dollar value of essential health benefits cannot be lower than \$750,000 for the first plan year beginning on or after September 23, 2010. No annual limits on essential health benefits will be permitted for plan years beginning on or after January 1, 2014.

Effect on HRAs

Accordingly to regulations issued in June, a health reimbursement arrangement (HRA) is a group health plan that is subject to the new restriction on annual limits. It isn't clear whether Congress intended to subject any HRAs - almost all of which impose annual limits on reimbursable expenses - to this new rule, and, in fact, the HHS has asked for comments on the application of these limits to HRAs.

"Integrated" HRAs Not Affected: The regulations issued in June 2010 provide that if an HRA is integrated with "other (health) coverage" that complies with the new rules on limits, the fact that HRA benefits are themselves limited will not violate the new rule. Thus, if an HRA is integrated with a high deductible or other health insurance arrangement, the annual limit under the HRA will not violate the law. It isn't clear what it means for an HRA to be "integrated" with an insurance arrangement, but if employees are eligible for the HRA only if they participate in the insurance arrangement, and the essential health benefits covered by the HRA are also covered (without an impermissible annual limit) by the insurance, the HRA should be considered integrated with the health insurance.

"Stand alone" HRAs May Need an HHS Waiver: A "stand-alone" HRA - one that is not integrated with a high deductible or other insured plan, or some other health coverage - obviously cannot rely on the special rule for integrated HRAs. However, a stand alone HRA that covers only retirees could be exempt under a separate rule that applies to retiree only plans,

and an HRA that provides only "excepted" benefits (for example, vision and dental benefits) may also be exempt. However, a stand alone HRA that covers active employees and that provides any "essential health benefits" is subject to the new restriction on annual limits, starting with the first plan year beginning on or after September 23, 2010. For example, an HRA that covers prescription drug costs of covered employees up to an annual limit, and that is paired with an insured plan that doesn't provide drug coverage, would be subject to the new rule because, as to drug coverage it is a stand alone HRA and prescription drug is an essential health benefit (see below).

HHS Waiver Applications

The Department of Health and Human Services is permitting health plans that would otherwise be subject to the new restriction to apply for a temporary waiver of the annual limit rule for the 2011 plan year. The application must be made at least 30 days before the plan year begins. Additional information on the waiver process is available on the HHS website at: http://www.hhs.gov/ociio/regulations_2010-1_20100903_508.pdf. To repeat, the waiver application deadline for a calendar year plan is December 1, 2010.

"Essential Health Benefits"

Essential health benefits that are subject to the restriction on annual limits include:

- ambulatory care
- emergency services
- hospitalization
- laboratory services
- maternity and newborn care
- mental health and substance use disorder services, including behavioral health treatment
- pediatric services, including oral and vision care
- prescription drugs
- preventive and wellness services and chronic disease management
- rehabilitative and habilitative care and devices

If you have any questions on the annual limit rules and their impact on HRAs, or any other aspect of the new health care reform law, please contact please contact Robert W. Patterson at 716.843.3910 or rpatterson@jaeckle.com, or Michele O. Heffernan at 716.843.3850 or mheffernan@jaeckle.com.

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