



WRMarketplace

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TOPIC: Trends in Health Care Benefits - Qualified Small Employer Health Reimbursement Arrangements.

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MARKET TREND: Given the ever-rising costs of health care benefits, many small employers cannot afford to provide robust health insurance coverage for their employees. Even if these employers wanted to provide some minimal coverage, the Patient Protection and Affordable Care Act (“ACA”) prevented them from doing so. Qualified Small Employer Health Reimbursement Arrangements (“QSEHRAs”) offer a solution.

SYNOPSIS: Pursuant to a provision of the 21st Century Cures Act (the “Cures Act”), an employer with fewer than 50 full-time employees can establish a QSEHRA to provide its employees with health care benefits short of a comprehensive health plan. To do so, the employer must: (1) not offer any other group health plan to any of its employees and (2) be prepared to make the arrangement available to all its employees on the same basis, subject to statutory limits. While there are notice, recordkeeping, and documentation requirements associated with these arrangements, they can provide a tax benefit to employees while offering small employers recruiting and retention tools.

TAKE AWAYS: The market reform provisions of the ACA prevented employers from providing a meaningful benefit to their employees in the form of limited reimbursements for medical expenses or health insurance premiums. This result was particularly

problematic for employers who were too small to be required to provide health insurance for their employees and could not afford to provide full-fledged health plans. The Cures Act, by creating QSEHRAs, enables small employers to provide the employees with this assistance.

Before the enactment of the ACA, employers who did not want to provide full-fledged health plans to their employees sometimes offered some money each year to employees to cover medical expenses or health insurance premiums. For purposes of the ACA, however, these arrangements were deemed to be group health plans subject to certain legal requirements and in violation of the market reform provisions. Thus, these arrangements had to be discontinued to avoid subjecting the employers to substantial tax penalties.

Pursuant to a provision of the Cures Act, enacted this past December, certain employers can now offer these arrangements to their employees without violating the ACA. Specifically, the Cures Act authorized the implementation of a Qualified Small Employer Health Reimbursement Arrangement, or “QSEHRA,” through which reimbursements of medical expenses or the payment of insurance premiums could be offered if certain requirements are satisfied.

QSEHRA REQUIREMENTS

Small Employers with No Group Health Plans. Only a small employer that does not offer any group health plan may maintain a QSEHRA. To be QSEHRA-eligible, the employer must not be required under the ACA to provide minimum essential coverage to full-time employees. Thus, only employers that: (1) ***employ less than 50 full-time employees*** (including full-time equivalents) and (2) are not members of a controlled group of companies that employs 50 or more full-time employees can have a QSEHRA. In addition, the employer (or any member of its controlled group) cannot maintain any other group health plan for any of its employees, even those who would not be eligible for the QSEHRA.

Exclusively Employer-Funded. The QSEHRA must be exclusively employer-funded. All amounts payable from the QSEHRA must come from employer contributions. ***Employee contributions to the QSEHRA are not permitted.***

Coverage of All Employees. Generally, the QSEHRA must be provided on the same terms to all employees of the employer. Certain employees, however, can be excluded from participation:

- Employees with fewer than 90 days of service;
- Employees under age 25;
- Part-time and seasonal employees;
- Employees covered by a collective bargaining agreement; and
- Non-resident aliens with no U.S. source income.

Variations in coverage terms under the QSEHRA are permitted to the extent there is variation in the price of an insurance policy in the relevant individual health insurance market based on the age of the employee and the number of family members covered.

Proof for Reimbursement & Limitations. The employer must obtain proof of payment of medical expenses before providing reimbursement and must not exceed annual limit on reimbursements to an employee. Upon proof of payment of expenses for medical care, as defined under the Internal Revenue Code (“Code”) and ***which includes the payment of premiums for health insurance***, the employer provides reimbursement of those expenses, up to the limit set under the Cures Act. ***The limit on annual reimbursements is \$4,950 for individual coverage and \$10,000 for coverage that includes expenses incurred by or on account of family members.*** These limits must be prorated for participation in a QSEHRA for fewer than 12 months in a year and are expected to be increased in future years to reflect inflation.

Notice Requirements. The Cures Act requires that an employer maintaining a QSEHRA provide notice to eligible employees. The notice must specify three things:

1. The maximum amount of reimbursements and payments that may be made to the eligible employee under the QSEHRA for the year;
2. A statement that the employee must notify any state health care exchange in which he applies for a subsidy of the amount available to him as reimbursement under a QSEHRA; and
3. A statement that if the employee does not have “minimum essential coverage” for any month, he may be subject to penalties under the individual mandate and the reimbursement amount provided under the QSEHRA will be includible in his gross income for the year.

The notice must be provided 90 days before the beginning of each year or, in the case of an employee who is not eligible to participate in the QSEHRA at the beginning of the year, on the date the employee first becomes eligible to participate. Failure to provide this notice timely can result in the imposition of a penalty of \$50 per employee who was not notified. The Cures Act provides a transition rule under which, in the case of a QSEHRA established in 2017, this notice will be considered timely if it is provided within 90 days after the enactment of the Cures Act. However, the IRS recently issued a notice stating that it intends to release guidance soon on the required content of this notice and that, for 2017, notices will be considered timely if they are provided within 90 days after the issuance of that additional guidance.

OTHER EMPLOYER OBLIGATIONS FROM MAINTAINING QSEHRAS

There are a number of other obligations under ERISA and the Code that arise in connection with the implementation of a QSEHRA that an employer should keep in mind:

- The amount available to an employee for a year under a QSEHRA must be reported annually on the employee's Form W-2.
- A QSEHRA is a welfare plan under ERISA and, therefore, requires a plan document, summary plan description, and claims procedure.
- A QSEHRA is **not** subject to the requirements of COBRA.
- A QSEHRA is considered a "covered entity" for purposes of the HIPAA privacy and security rules. If, however, it is self-administered by the employer because it covers fewer than 50 employees, it will be exempt from the otherwise applicable HIPAA rules.

ECONOMIC CONSEQUENCES TO EMPLOYEES

Exclusion of Reimbursements from Gross Income. If an employee receiving payments or reimbursements under a QSEHRA has "minimum essential coverage" (*i.e.*, coverage under another employer's health plan, or an insurance policy purchased in the individual market or on a health care exchange), the amounts reimbursed to the employee under a QSEHRA are not included in the employee's taxable income. If the employee does not have minimum essential coverage, the reimbursements from a QSEHRA will be taxable.

Potential Reduction in Health Care Exchange Subsidies. Participation in a QSEHRA may reduce the amount of any subsidy the employee can get in a health care exchange. No subsidy is available if the QSEHRA is determined to constitute "affordable coverage" based on a specified formula.¹ If the QSEHRA does not constitute affordable coverage, the available subsidy is reduced by the amount of reimbursement available to the employee under the QSEHRA.

TAKE AWAYS

The market reform provisions of the health reform legislation prevented employers from providing a meaningful benefit to their employees in the form of limited reimbursements for medical expenses or health insurance premiums. This result was particularly problematic for employers who were too small to be required to provide health insurance for their employees and could not afford to provide full-fledged health plans. The Cures Act, by creating QSEHRAs, enables small employers to provide the employees with this assistance.

NOTES

¹ A QSEHRA is affordable coverage if the excess of the monthly premium for self-only coverage under the second-lowest-cost silver plan in the employee's market over 1/12 of the annual amount reimbursable to the employee under the QSEHRA is not more than 1/12 of 9.5% of the employee's household income.