

COMPLIANCE OVERVIEW



Spousal Incentive HRAs



Spousal incentive health reimbursement arrangements (HRAs) are a type of tax-advantaged medical reimbursement account that employers use as a cost-savings strategy. A spousal incentive HRA works like a traditional HRA in many respects, but it is only available to employees who enroll in health coverage through a spouse's employer. By reimbursing employees on a tax-free basis for their eligible out-of-pocket expenses under a spouse's health plan, this type of HRA incentivizes employees to enroll in health coverage through their spouse's employer instead of their own employer.

Employers of all sizes can adopt spousal incentive HRAs. Although they are mostly used by employers with self-insured health plans to lower health plan spending, employers with fully insured health plans can also use spousal incentive HRAs to save on premium costs.

Spousal incentive HRAs are subject to many of the same compliance requirements as traditional HRAs. However, there are some special compliance requirements that employers should be aware of when considering a spousal incentive HRA, including the Affordable Care Act's (ACA) integration requirements, impact on health savings account (HSA) eligibility and additional ACA reporting.

Overview

Spousal incentive HRAs encourage employees to opt out of their employer's health coverage and instead elect coverage through a spouse's employer by reimbursing cost-sharing amounts that are incurred under the spouse's employer's group health plan, such as deductibles, copayments and coinsurance. As with traditional HRAs, the value of the HRA coverage is not taxable to covered employees, and any reimbursements that employees receive from the HRA for medical care are excludable from their income for tax purposes.

Incentivizing employees (and spouses) to elect health coverage elsewhere is not a new cost-saving strategy for employers. Traditionally, employers have provided taxable payments to employees who opt out of their health coverage (i.e., opt-out payments) or imposed an additional premium, or surcharge, on covered spouses who decline health coverage through their own employers. A spousal incentive HRA may be more appealing to employees than these traditional options because, unlike an opt-out payment, it provides nontaxable benefits and is less punitive than a spousal surcharge.

Employer Action Items

Spousal incentive HRAs are subject to many of the same legal requirements that apply to traditional HRAs, such as ERISA, COBRA and HIPAA. However, there are some special compliance requirements for spousal incentive HRAs that employers should be aware of when considering this type of plan design. For example, employers with spousal incentive HRAs should:

- **Confirm that employees (and family members) who are covered by the HRA are covered by another employer-sponsored group health plan.** To do this, an employer may rely on an employee's reasonable representation of their coverage;
- **Decide whether to design the HRA to be compatible with HSA contributions** (i.e., a post-deductible HRA option for when the employee's spouse elects high deductible health plan (HDHP) coverage through their employer);
- **Limit the HRA's nontaxable benefits to employees, spouses, tax dependents and children up to age 27.** A spousal incentive HRA may be designed to reimburse the eligible medical care expenses of an employee who enrolls in group

health coverage sponsored by their domestic partner's employer. However, unless a domestic partner qualifies as a tax dependent under the federal tax law, **an HRA cannot reimburse a domestic partner's medical care expenses on a tax-favored basis;**

- **Do not generally allow the HRA to reimburse the spouse's premiums for their group health plan coverage.** Most employers allow employees to pay their health plan premiums on a pre-tax basis through a Section 125 cafeteria plan. HRAs are prohibited from reimbursing group health plan premiums that have been paid on a pre-tax basis; and
- Understand that they may have **additional reporting responsibilities under the ACA** because the reporting exception that applies to traditional HRAs is inapplicable to spousal incentive HRAs.

Compliance Requirements

ACA Integration

Most HRAs must be integrated with other group health coverage to comply with the ACA's market reforms. To satisfy the ACA's integration requirements, the following four requirements must be met:

1. The employer sponsoring the HRA must **sponsor a group health plan** that provides major medical coverage;
2. Employees (and their spouses and dependent children) who are covered under the HRA must be **enrolled in a group health plan** that provides major medical coverage, regardless of whether their own employer or another employer sponsors the plan;
3. The HRA must be **available only to employees (and their spouses and dependent children) who are enrolled in an employer-sponsored health plan** that provides major medical coverage, regardless of whether their own employer or another employer sponsors the plan; and
4. Employees must be offered the opportunity to **permanently opt out of the HRA at least annually and upon termination of employment.**

Significantly, the ACA's integration requirements do not require an HRA and the group health plan to be sponsored by the same employer. Thus, a spousal incentive HRA may be integrated with a group health plan sponsored by a spouse's employer. Also, federal agencies confirmed in a set of [frequently asked questions](#) that an employer may rely on an employee's **reasonable representation** that the employee (and other family members covered by the HRA) are covered by another employer-sponsored group health plan.

HSA Eligibility

Only an eligible individual can establish an HSA and make HSA contributions (or have them made on their behalf). In general, individuals are ineligible for HSA contributions if they have health coverage that pays benefits before the annual minimum deductible for an HDHP is met. This minimum deductible for family HDHP coverage is \$3,200 for plan years beginning in 2024 and \$3,300 for plan years beginning in 2025.

Individuals whose medical expenses can be reimbursed by a spousal incentive HRA are not eligible for HSA contributions unless the HRA is designed to be compatible with HSA contributions. It does not matter whether an individual is covered by the HRA as an employee or as a spouse whose medical expenses can be reimbursed; both types of individuals are ineligible for HSA contributions.

However, spousal incentive HRAs can be designed to be compatible with HSA contributions by including a post-deductible option for employees enrolled in a spouse's HDHP. Under this option, the HRA only reimburses cost-sharing expenses (e.g., copayments and coinsurance) that are incurred **after the minimum HDHP family deductible has been reached for the year.** Before the HRA reimburses expenses, employees must provide an explanation of benefits or similar documentation to show that the minimum HDHP deductible has been satisfied.

Reimbursement Restrictions

In addition to covering employees, HRAs may be designed to reimburse the eligible medical care expenses of an employee's spouse, children who are under age 27 and tax dependents. A spousal incentive HRA may also be designed to reimburse the eligible medical care expenses of an employee who enrolls in group health coverage sponsored by their domestic partner's employer. However, **unless a domestic partner qualifies as a tax dependent under the federal tax law, an HRA cannot reimburse a domestic partner's medical care expenses on a tax-favored basis.**

Spousal incentive HRAs are typically used to reimburse an employee's (or family member's) cost-sharing expenses under the spouse's employer's group health plan, such as deductibles, copayments and coinsurance. **Spousal incentive HRAs generally cannot be used to reimburse the spouse's premiums for coverage under their employer-sponsored health plan.** In most cases, a spouse will pay their premiums for health coverage on a pre-tax basis through a Section 125 cafeteria plan. Federal tax law prohibits an HRA from reimbursing premiums for coverage that has been paid on a pre-tax basis.

ACA Reporting

The ACA requires certain employers to report information to the IRS each year about the health plan coverage they offer (or do not offer) to their employees. These employers must also provide related statements to individuals regarding their health coverage. Under these reporting requirements:

- Applicable large employers (ALEs) report health coverage using IRS [Forms 1094-C](#) and [1095-C](#). To qualify as an ALE, an employer must employ, on average, at least 50 full-time employees, including full-time equivalent employees, on business days during the preceding calendar year;
- Non-ALEs report self-funded health coverage using IRS Forms [1094-B](#) and [1095-B](#); and
- Non-ALES with fully insured health plans (or no health plans) are not subject to ACA reporting.

In general, HRAs are considered self-funded health plans subject to ACA reporting. However, there is an exception that allows employers to avoid the coverage-reporting requirements for an HRA where the employee is enrolled in other major medical coverage through that employer. **This exception does not apply to spousal incentive HRAs** because employees waive health coverage through their employer to have access to the HRA's benefits. Thus, sponsoring a spousal incentive HRA adds to the existing reporting obligation for ALEs and non-ALEs with self-funded health plans. Moreover, sponsoring a spousal incentive HRA will trigger ACA reporting requirements (Forms 1094-B and 1095-B) for non-ALEs with fully insured health plans that otherwise would not be subject to ACA reporting.

Other Compliance Requirements

Spousal incentive HRAs are subject to many of the same compliance requirements that apply to traditional HRAs, including the following:

Law	Requirements
ERISA	An HRA is an employee welfare benefit plan under ERISA. Unless an employer is exempt from ERISA because it qualifies as a church or governmental employer, its HRA must comply with ERISA's standards. This means the HRA must have a plan document and summary plan description, and it is subject to the Form 5500 annual filing requirement (unless an exception applies). Small HRAs (with fewer than 100 covered employees) that are unfunded are not subject to the Form 5500 requirement.
COBRA	HRAs are group health plans that are subject to COBRA unless the employer sponsoring the plan is a small employer (with fewer than 20 employees) or a church. Employers with HRAs that are subject to COBRA should make sure they provide required notices and offer COBRA coverage to participants who would lose HRA coverage due to a qualifying event. If an employee elects COBRA coverage for the HRA, the employee must have access to the unused balance and any additional accruals provided to similarly situated employees, less any year-to-date reimbursements.
HIPAA	HRAs are group health plans that are subject to the HIPAA Privacy and Security Rules unless they qualify for the exemption for small plans (with fewer than 50 participants) that are self-insured and self-administered.
Code Section 105(h)	HRAs must comply with nondiscrimination rules for self-insured health plans under Internal Revenue Code Section 105(h). Under these rules, an HRA cannot discriminate in favor of highly compensated individuals (HCIs) regarding eligibility to participate in the plan, and the benefits provided under the HRA must not discriminate in favor of participants who are HCIs.
PCORI Fees	Self-insured health plans and health insurance issuers are subject to annual fees to help fund the ACA's Patient-Centered Outcomes Research Institute (PCORI). These fees are due each year by July 31. In general, the PCORI fee is calculated based on the average number of lives covered by the plan, including spouses and dependents. There are some special rules for applying PCORI fees to HRAs. Under these rules, if the employer sponsoring the HRA also maintains another self-insured health plan and the HRA and the other health plan have the same plan year, each person covered by both plans is only counted once. This special rule does not apply to spousal incentive HRAs because employees are enrolled in group health plan coverage through their spouses, not through their own employer. However, another special rule for HRAs allows employers to determine the fee amount based only on the number of employees participating in the HRA (excluding covered spouses and dependents).

LINKS AND RESOURCES

- [IRS Notice 2013-54](#) and [DOL Technical Release 2013-03](#) (guidance on integrated HRAs under the ACA)
- [IRS Publication 969](#), Health Savings Accounts and Other Tax-favored Health Plans
- [IRS Revenue Ruling 2002-3](#) (HRAs cannot reimburse employees for health plan premiums paid on a pre-tax basis)

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