

# IAA Legislative Ledger



Q-2.2 2013  
May 07, 2013

## Affordable Care Act Impacts Health Reimbursement Arrangement (too!)

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### New Proposed Regulations for HRAs under ACA

Many of our clients offer Health Reimbursement Arrangements ("HRAs") to help their employees manage health care expenses. HRAs are considered "group health plans" and, as a result, are subject to certain insurance market reforms imposed by the Affordable Care Act ("ACA").

Recently, the IRS issued proposed regulations regarding several changes to HRAs under ACA. IAA has reviewed the proposed regulations. The following items should be considered.

#### Comparative Effectiveness Research Fee:

ACA requires that plan sponsors and health insurers pay a fee to be attributed to the Patient-Centered Outcomes Research Trust Fund. The fund will establish a nonprofit corporation to conduct clinical effectiveness research to evaluate risks and benefits of medical treatments, services, procedures and drugs.

**Who must comply:** Under the proposed regulations, many HRAs will be required to pay the fee. The proposed regulations state that multiple self-insured arrangements maintained by the same employer with the same plan year are subject to a single fee. In other words, an HRA is not subject to the fee if it is integrated with a self-insured health plan. If, however, the

HRA is integrated with a fully-insured health plan, the insurance company and the plan sponsor of the self-insured HRA are each required to pay the fee.

**Calculating the Fee:** For the initial Plan year, multiply the average number of HRA employees enrolled times \$1.00. The fee increases to \$2.00 in 2013, and then to an amount indexed to national health expenditures for each year through 2019, after which the fee ends. The fee will be based on the average number of covered lives under the plan. For HRAs not integrated with a self-insured health plan, the proposed regulations clarify that each participant can be treated as a single life when determining the fee, regardless of the number of dependents on the plan. For example, if an employer has, on average, 25 employees who participate in the HRA for the year, the fee for 2012 would be \$25.00 for year 1, \$50 for year 2, etc

**Effective Dates:** These proposed regulations are intended to apply to policy and plan years that end on or after October 1, 2012, and before October 1, 2019.

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## **Prohibition on Lifetime and Annual Limits:**

ACA prohibits lifetime limits on essential benefits and allows only restricted annual limits on essential benefits until 2014. After 2014, no annual limits on essential benefits will be permitted.

**Who must comply:** Many industry experts have questioned whether and how these new rules might apply to HRAs. Certain HRAs will not be subject to the new rules – including HRAs that are part of an integrated group health plan (that complies with the lifetime and annual limit restrictions), retiree-only HRAs, limited purpose HRAs and, possibly, HRAs that meet a special exception for health FSAs. Therefore, it appears that only stand-alone HRAs that cannot satisfy any other exception may be subject to the annual limit restrictions.

## **What is an “Integrated” HRA?**

An HRA is not considered integrated with primary health coverage offered by the employer unless, under the terms of the HRA, the HRA is available **only to employees who are covered by primary group health plan coverage provided by the employer** and meeting the requirements of PHS Act section 2711. The below link is to the DOL Q&A Page on this topic.

<http://www.dol.gov/ebsa/faqs/faq-aca11.html>

This means that the only type of HRA that can be offered to an employee **not covered by a group health plan of the employer** would be an HRA plan that covered excepted benefits only.

Enjoy the rest of your day and stay healthy!

*Thank you,  
Paul Kelly, President*

Insurance Administrator of America, Inc.