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Legislative Update—Cures Act and QSEHRAs

The "21st Century Cures Act," ("Cures Act") was passed in Congress and signed by then-President Barack Obama in December 2016. The Cures Act contains a new exception effective in 2017 for certain small-employer health reimbursement arrangements (HRAs) from the Affordable Care Act (ACA) rules for group health plans—including the prohibition on annual limits.

Specifically, an employer with fewer than 50 full-time employees[1] that does not offer a group health plan to *any* of its employees is eligible to provide a "qualified small employer health reimbursement arrangement" (QSEHRA). The Cures Act enables small employers to provide money through an HRA to help their employees purchase individual health insurance, and excludes such an HRA from the ACA penalties that would have otherwise applied to a stand-alone HRA with an annual dollar limit.

Since most employers in The United Methodist Church (UMC), including most local churches, offer a group health plan to at least some employees, the Cures Act may not have denomination-wide significance. However, for employers in annual conferences where employer participation in a group health plan is voluntary, there may be some employers interested in providing a QSEHRA. If a local church (assuming the local church is considered the employer[2] for purposes of the ACA and the Cures Act) decides not to offer any group health plan to any employee[3] and is willing to abide by the other Cures Act requirements, it may offer a QSEHRA.

Certain requirements apply to a QSEHRA under the Cures Act:

- The QSEHRA must be "funded solely by an eligible employer[4]";
- Generally[5], the QSEHRA must be provided to all employees;
- Generally[6], the QSEHRA must be provided on the same terms to such employees; and

[1] Technically, an "eligible employer," in terms of size, is one that "is not an applicable large employer" (ALE), thus incorporating the definition of full-time employee in the definition of ALE, Code 4980H(c)(2)—i.e., an employer with fewer than 50 Full-Time Employees or Full-Time Equivalent Employees (collectively "FTEEs").
[2] See Part 2B of the Employer Shared Responsibility toolkit at **www.wespath.org/assets/1/7/4567.pdf** on the question of who the employer is considered to be for purposes of the ACA.
[3] In this analysis, "any employee" includes the clergyperson because UMC clergy are considered "employees" for employee benefits purposes [even though clergy are considered "self-employed" for payroll tax (SECA) purposes, and are not considered "employees" under *The Book of Discipline*].
[4] As noted above, to be eligible, the employer may not be an ALE, and it must not offer any group health plan to its employees. This provision also clarifies that no salary-reduction payments may be made by employees under the arrangement.
[5] THE QSEHRA is allowed to exclude employees under age 25, employees who have not completed 90 days of service, part-time or seasonal employees, and employees in a unit covered by a collective bargaining agreement (if accident and health benefits were the subject of good faith bargaining).
[6] Variation is permitted if driven by variation in the price of an insurance policy due to age or number of family members (provided that the same policy is used for calculating the permissible variations).

- Generally[7], the employer must provide notice about the QSEHRA at least 90 days before the beginning of the year.
- QSEHRA funding is intended for health coverage, including health plan premiums; thus QSEHRA contributions are tax-free to the employee only if the employee purchases health coverage.

If an employee with a QSEHRA is able to purchase an “affordable” health insurance policy with the QSEHRA, then that employee will not be eligible for a government subsidy (premium tax credit) for that month[8]. Health coverage is “affordable” as defined by the ACA when the employee spends no more than 9.5%[9] of his/her household income to purchase the second-lowest-cost silver plan on the public Exchange (federal/state Health Insurance Marketplace).

There are also QSEHRA dollar limits imposed by the Cures Act. QSEHRA payments for any year may not exceed $4,950 per employee (or $10,000 for family coverage). This limit is to be adjusted in the future for inflation.

The QSEHRA may provide for the payment of medical care expenses, including premiums for purchase of individual health insurance policies, after proof of coverage is provided to the employer. The reimbursements are tax-free to the employee, unless he or she does not have coverage[10] during the month when the care is provided.

For UMC annual conferences that ended their conference health plans and increased employee taxable compensation in lieu of a group health plan, the maximum allowable QSEHRA may not be sufficient to fully pay for an individual health policy. However, to the extent employer payments to the QSEHRA are used to replace what would otherwise be taxable additional compensation, the tax burden on the employee could be partially reduced. As noted above, QSEHRA contributions are tax-free *only if* the employee obtains health coverage.

[7] Transition relief is provided.
[8] And if an employee is eligible for a subsidy, the amount is reduced by that month’s QSEHRA contribution.
[9] As indexed for inflation.
[10] The coverage required is “minimum essential coverage.”

Transition Relief Extended

Transition relief is also provided for employers that would qualify for relief under IRS Notice 2015-17. Notice 2015-17 provided transition relief for employers that were not ALEs with respect to employer payment plans that paid for or reimbursed employees for individual health policy premiums (or Medicare Part B or Part D premiums) through June 30, 2015. The Cures Act extends this transition relief for any plan year beginning on or before December 31, 2016[11].

[11] The IRS, DOL and HHS published guidance concerning QSEHRAs in December 2016, available at **www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQ-Part-35_12-20-16.pdf**. The guidance notes that for plan years beginning after December 31, 2016, the Cures Act exclusion of QSEHRAs from ACA group health plan requirements will apply, but HRAs that are not QSEHRAs will continue to be subject to ACA penalties. For plan years beginning on or before December 31, 2016, **IRS Notice 2015-17** will apply, and it "does not extend to stand-alone HRAs or other arrangements to reimburse employees for medical expenses other than insurance premiums." The 2015 guidance also notes that such an HRA would be minimum essential coverage, and would disqualify anyone covered by the HRA from receiving a premium tax credit.

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