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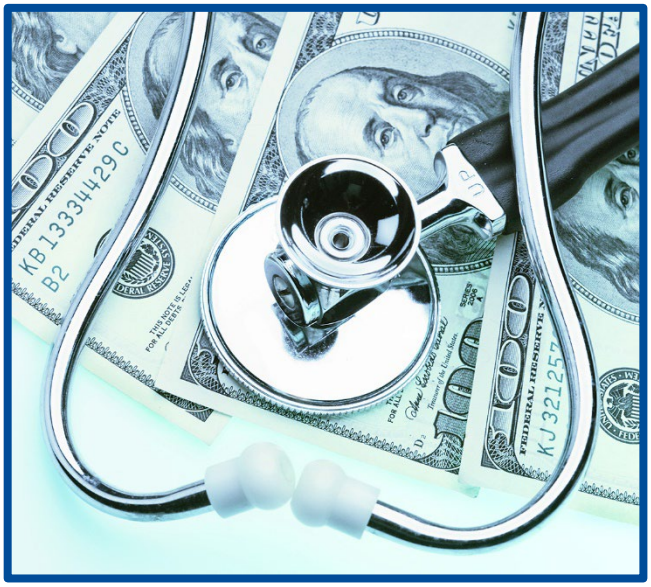
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Retiree HRA Compliance Checklist

This checklist is provided as an informational item designed to help annual conferences that sponsor the Medicare Marketplace and HRA Program (or "Via Benefits Program") understand the basic compliance requirements of the health reimbursement arrangement, or "HRA." It is not legal advice, but the information provided is designed to be helpful for plan sponsors and their counsel.



HRAs became more popular after the IRS made the tax benefits of the arrangement clear, in some publications issued in 2002. The IRS explained that an employer can set up an arrangement for it to pay medical expenses of its employees or retired employees, and it will be considered a "health plan" under a section of the tax code providing an exclusion from tax for monies paid by employers on behalf of employees or former employees, so long as certain rules are followed. Thus, these tax code rules for health plans should be followed. The advantage of such an HRA is that retired employees of a church employer can receive reimbursement of medical expenses from an account set up and funded for them by their (previous) employer(s), without having to pay income tax on amounts this account pays on their behalf.



Congress has separately created other requirements for health plans in general, in laws such as HIPAA and the ACA. Thus, these other requirements should be followed as well.

With that in mind, see next page for a list of some key issues to check for compliance.

Tax Rules



Q: Is the arrangement, along with its rules, in writing?

A: The IRS generally requires that the plan and its applicable rules be in writing. Wespath provides a plan document, **template summary plan description**, and **template supplemental policy** for consideration by plan sponsors.

Q: Is the HRA paid for by the annual conference/employer?

A: The tax code requires that all of the money in the account come from the annual conference/employer, and that none be contributed by the employee or former employee.



Q: Do the terms of eligibility or the benefits provided discriminate in favor of (former) highly compensated individuals?

A: In order for the HRA benefits to be tax-free, the HRA may not discriminate in favor of (former) highly compensated individuals (which includes the highest paid 25% of all employees, and the 5 highest paid officers). Assuming the plan sponsor allocates the same type and dollar limit per year to all who must be counted for this test, it will not be discriminating in benefits.

Q: Are the payments for "medical care expenses"?

A: The individual may not be entitled to payments for anything other than medical care expenses. Items that qualify as medical care expenses are listed in IRS Publication 502.

Q: Are the payments for medical care expenses of the former employee, or his or her spouse or tax dependents?

A: The HRA is allowed to reimburse the former employee for expenses of his or her spouse or tax dependent.

Q: Do the rules of the HRA require substantiation of the medical expense?

A: IRS rules require that payments be supported by substantiation. In addition, the expense must be incurred after the HRA is established and the individual is enrolled. (As the administrator, Via Benefits will check for substantiation. See Via Benefits FAQ, available at: **www.wespath.org/assets/1/7/4759.pdf**.)

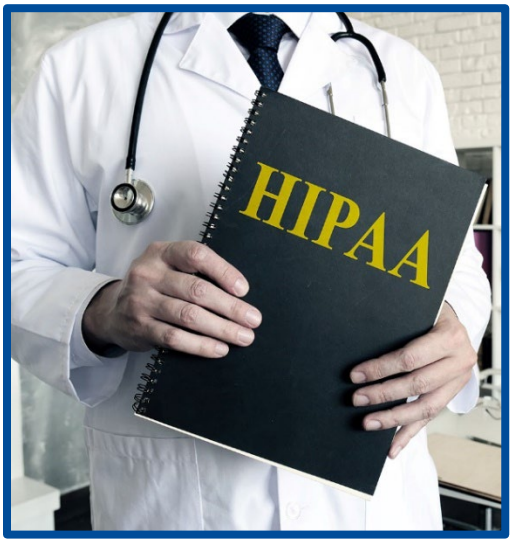
Health Plan Rules

The primary sources of legal requirements on health plans, aside from the tax rules discussed above, are HIPAA and the ACA. While the privacy provisions of HIPAA will apply to the HRA as a health plan, many of the rules of the ACA will not apply to the HRA if it is limited to retirees and long-term disabled.

Q: Is HRA eligibility limited to retirees, the long-term disabled, or participants enrolled in Medicare under the Medicare Secondary Payor Small Employer Exception?[1]

A: Plans limited to these categories are generally eligible for exceptions from some ACA requirements.

A compliance issue might arise if a formerly active employee returns to work with the annual conference or church that employed him or her prior to retirement. Thus, in drafting its policy for the HRA, the plan sponsor might want to consider freezing or suspending access to the HRA until the individual is once again fully retired. More detail is available on this issue in a white paper available at: **https://www.wespath.org/assets/1/7/4956.pdf**.



Q: Are protections in place for protected health information ("PHI")? As noted above, the privacy provisions of HIPAA apply to the HRA as a health plan.

A: On behalf of the plan, Wespath provides the required HIPAA privacy notice to HRA participants and maintains HIPAA privacy and security policies and procedures that cover the plan.[2] The plan sponsor is responsible for maintaining appropriate safeguards of PHI that it uses or discloses in the course of administration of the HRA (e.g., PHI received in connection with an appeal of a denied reimbursement claim). Via Benefits requires the plan sponsor designate appropriate individuals as "HIPAA Designated Users" in Benefit View, their administrative portal, in order to access PHI.

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[1] Technically the exception is for a plan that has "less than two participants who are current employees" (Code Section 9831(a)(2)), but the IRS has indicated that such a plan may include long-term disabled, at least for now. (*See* FAQ About Affordable Care Act Implementation, Part III, available at **www.dol.gov/agencies/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/aca-implementation-faqs**.)

There is a separate exception for employers with fewer than 20 employees that wish to provide an HRA for current employees who are eligible for Medicare. (*See* 80 Federal Register 72192, 72202.)

[2] The plan document provided by Wespath includes an Article related to HIPAA Compliance. *See also* Notice of Privacy Practices, available at **www.wespath.org/assets/1/7/4939.pdf**.

Q: Is the plan sponsor complying with PCORI fee requirements?



A: The ACA created a new research institute, called the Patient Centered Outcomes Research Institute (PCORI). The institute is funded in part by a fee to be paid by certain health insurers and sponsors of self-insured health plans (including those covering former employees). Since the HRA is a health plan, and is considered self-insured, the plan sponsor is required to pay a PCORI fee.[3] Wespath partners with Via Benefits to provide counts that can be used to calculate the PCORI fee, as well as instructions and a reminder annually.

Q: Does the plan sponsor maintain a policy/procedure for handling appeals of denied reimbursement claims?

A: The template supplemental policy document that Wespath has provided includes sample appeals policy language.

Other

Q: Does the plan sponsor maintain a record retention policy that covers records associated with the administration of the HRA?

A: Although generally not required by law, plan sponsors should consider establishing a record retention policy to help ensure that documents supporting the HRA's compliance with applicable law are maintained as appropriate.

For example, with respect to the PCROI fee described above, the IRS advises plan sponsors to retain records associated with payment of the fee for at least four years from the latest of the date:

- the fee became due,
- you paid the fee, and
- you filed a claim with respect to the fee.

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[3] *See* IRS News Article, available at **https://www.irs.gov/newsroom/application-of-the-patient-centered-outcomes-research-trust-fund-fee-to-common-types-of-health-coverage-or-arrangements.**

The ACA includes a requirement that plan sponsors report certain health plan coverage information annually to participants and the IRS on Forms 1094-B, 1095-B, 1094-C, and 1095-C. However, there is an exception for coverage that provides benefits in addition to or as a supplement to other coverage, including Medicare. *See* Treasury Regulation 1.6055-1(d)(2)(ii). Given that HRAs in the Via Benefits Program supplement Medicare, this exception should apply.