



## **Compliance Cornered: 21st Century Cures Act Includes New HRA Provision for Small Employers**

Head over to the [Compliance Cornered blog](#) to check out our latest [post](#): *21st Century Cures Act Includes New HRA Provision for Small Employers*. The 21st Century Cures Act passed the House and Senate on a bipartisan basis and was signed by President Obama on December 13, 2016. This 1,000-page bill includes language that allows small employers to provide health reimbursement arrangement (HRA) funds for employees to purchase individual coverage.

### **Key provisions of Section 18001 titled “Exception from Group Health Plan Requirements for Qualified Small Employer Health Reimbursement Arrangements.”**

A “qualified small employer health reimbursement arrangement” is one that is funded solely by an eligible employer without salary reduction. **It is provided on the same terms to all eligible employees.**

Notwithstanding this requirement, the amount of the benefit may vary based on the price of a policy in the individual insurance market based on the age of the employee and/or family members and the number of family members eligible.

The arrangement provides payment or reimbursement of an eligible employee’s expenses for medical care under Section 213(d) incurred by the employee and eligible family members.

**An eligible employer is one that is not an applicable large employer (ALE) under the definition in section 4980H of the ACA. Also, the employer must not offer a group health plan to any of its employees.**

**The maximum dollar limit per year is \$4,950 for an individual employee and \$10,000 for family members.**

The maximum benefit may be prorated based on the months that an individual is covered by the arrangement. The annual maximum is to be adjusted for inflation using the Consumer Price Index (CPI) inflation rate.

**The plan is subject to nondiscrimination requirements and may exclude employees defined in Section 105(h)(3)(B).** The act amends these requirements for the purposes of this provision by substituting 90 days for “3 years” in clause (i). As such, employees that may be excluded are:

- Employees who have not completed 90 days of service
- Employees who have not attained age 25
- Part-time and seasonal employees
- Employees who are members of a collective bargaining agreement

- Employees who are nonresident aliens and who receive no earned income in the US.

### **Notice Required**

Employers are required to provide a notice 90 days before the beginning of the year or when an employee is first eligible for the plan. The notice must contain:

- Statement of the amount of the eligible employee's permitted benefit
- Statement that information regarding the benefit must be provided by the employee to any health insurance exchange if applying for an advanced premium tax credit (APTC)
- Statement that if the employee is not covered under minimum essential coverage (MEC) for any month that the employee may be subject to the individual mandate tax for the month and any reimbursements under the arrangement may be included in gross income.

**Failure to provide the notice can result in a penalty of \$50 per employee per incident not to exceed \$2,500.**

Notices must be provided to years beginning after 12/31/16 or 90 days after the date of enactment of the act.

### **HRA and Affordability**

The HRA reimbursement is treated as affordable coverage for a month if the amount that would be paid by the employee as premium for self-only coverage under the second lowest cost silver plan offered in their respective individual health insurance market does not exceed the household affordability threshold. The applicable amount for a month is calculated based on 1/12 of the employee's permitted benefit.

### **Effective Dates and Other Notes**

**The provisions of the section are effective for years beginning after 12/31/16. Coordination with the health insurance premium credit applies to taxable years beginning after 12/31/16.**

**Form W-2 reporting applies to calendar years beginning after 12/31/16.**

**The HRA benefit is not subject to COBRA continuation requirements.**

This small employer HRA is not considered a "group health plan" for some ERISA purposes.

There are some provisions for transitional relief, which may benefit small employers that have had HRAs that were not in compliance with previous IRS guidance.

NAHU is working with the administration for clarification in guidance or regulations on the practical application of small employers and employees wanting to take advantage of this new law.

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December 19, 2016