

HRA's and Annual Limits

Health Care Reform Act

Health Reimbursement Accounts

The Department of Health and Human Services has clarified the interpretation of the application of the restriction on annual limits as they apply to essential benefits.

The Regulation states that the new annual/lifetime limit rules are not applicable to a health flexible spending account (health FSA), medical savings accounts (MSAs) or health savings accounts (HSAs).

The Preamble says that the rule is not applicable to a health reimbursement arrangement (HRA) that is "integrated with other coverage," where the other coverage alone would comply with the annual/lifetime limit requirements. The Preamble says the fact that benefits under the HRA are limited does not violate the rule because the combined benefit satisfies the requirements. The Preamble says that retiree-only HRAs also are not subject to the rule due to the "retiree-only" exception discussed in the Preamble to the grandfather rules (related to the small employer exception found in ERISA and the Code).

Therefore, it appears that HRA's set up to reimburse copays or deductibles would not be subject to the Regulation because they are part of another health plan that has no annual limit, or won't have after the next renewal date.

We have posed that question to HHS for verification. We will notify you when we've received a response.

However, freestanding HRA's, those where the employer has set up an HRA and puts in a flat dollar amount for the general use of the participant is subject to the annual limits restriction. If the HRA is to continue it must apply for a waiver of the annual limit. The waiver application must be filed not less than 30 days before the first day of the year or, for plan years beginning after September 22, 2010 and before November 2, 2010, not less than 10 days before the beginning of the plan year.

Instructions for the waiver are in the following notice:

http://www.hhs.gov/ociio/regulations/patient/ociio_2010-1_20100903_508.pdf

Note that dental and vision (not associated with pediatric care) are not considered essential benefits so are not subject to the annual limit restriction.

This Summary is provided to you for general information purposes only and does not include references to other legal resources (e.g., supporting regulations, or formal or informal opinions) unless specifically noted. Please seek qualified and appropriate counsel for further information and/or advice regarding the application of the topics discussed herein to your employee benefits plan.

