



INDIVIDUAL COVERAGE HRA (ICHRA)

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DISCUSSION TOPICS

- Executive Order 13813
- Tri-Department Rulemaking
- Individual Coverage HRA (ICHRA)
 - Vs. Group Health Plan Offering
 - Eligibility
 - Coverage Verification
 - Reimbursements
 - Class Rules
 - Discrimination rules
 - Employer & Employee Options

EXECUTIVE ORDER 13813

- October 12, 2017, President Trump issued Executive Order 13813
- Directed the Departments to consider proposing regulations or revising guidance to:
 - Expand access to Association Health Plans (AHPs)
 - Expand the availability of Short-Term, Limited-Duration Insurance (STLDI)
 - Expand the availability and permitted use of Health Reimbursement Arrangements (HRAs)



TRI-DEPARTMENT RULEMAKING

- Proposed Rule published October 29, 2018
- Comments were due by December 28, 2018
- Final Rule published June 20, 2019
- **Applicable for plan years beginning on or after January 1, 2020**



ICHRA



ICHRA vs. GROUP HEALTH PLAN

- Employers may either offer an ICHRA or a traditional Group Health Plan (GHP), but within established classes may **not** offer employees a choice between the two.
- Purpose of this rule is to avoid market segmentation and health status discrimination under HIPAA regulations.
- Employers can maintain their traditional GHP for existing enrollees, with new hires offered only an ICHRA.
- A “traditional health plan” is a group health plan that is not limited to “excepted benefits.”
- Therefore an employer could offer both an ICHRA and a dental and vision plans.



Affordability Determination for ICHRA_s

- An ICHRA may qualify as an offer of coverage under ACA if deemed affordable and minimum value coverage
- Proposed regulations issued September 30, 2019
- Provides three safe harbors
 - The Look-back month
 - Affordability
 - Form w-2 wages
 - Rate-of-pay
 - Federal Poverty -line
 - Location
- Employers do not have to use all three



INDIVIDUAL COVERAGE HRA (ICHRA)

- Allows employers, regardless of size, to provide an HRA that reimburses:
 - Employee premiums paid to purchase individual health coverage; *and/or*
 - Medical out-of-pocket expenses under 213(d).
- Employee and covered dependents are required to be covered under an individual plan.
 - Employees and their dependents must be enrolled to be eligible for any reimbursements
 - Applies to both premium reimbursement and or 2213 expense reimbursement
- No annual cap on ICHRA contributions.



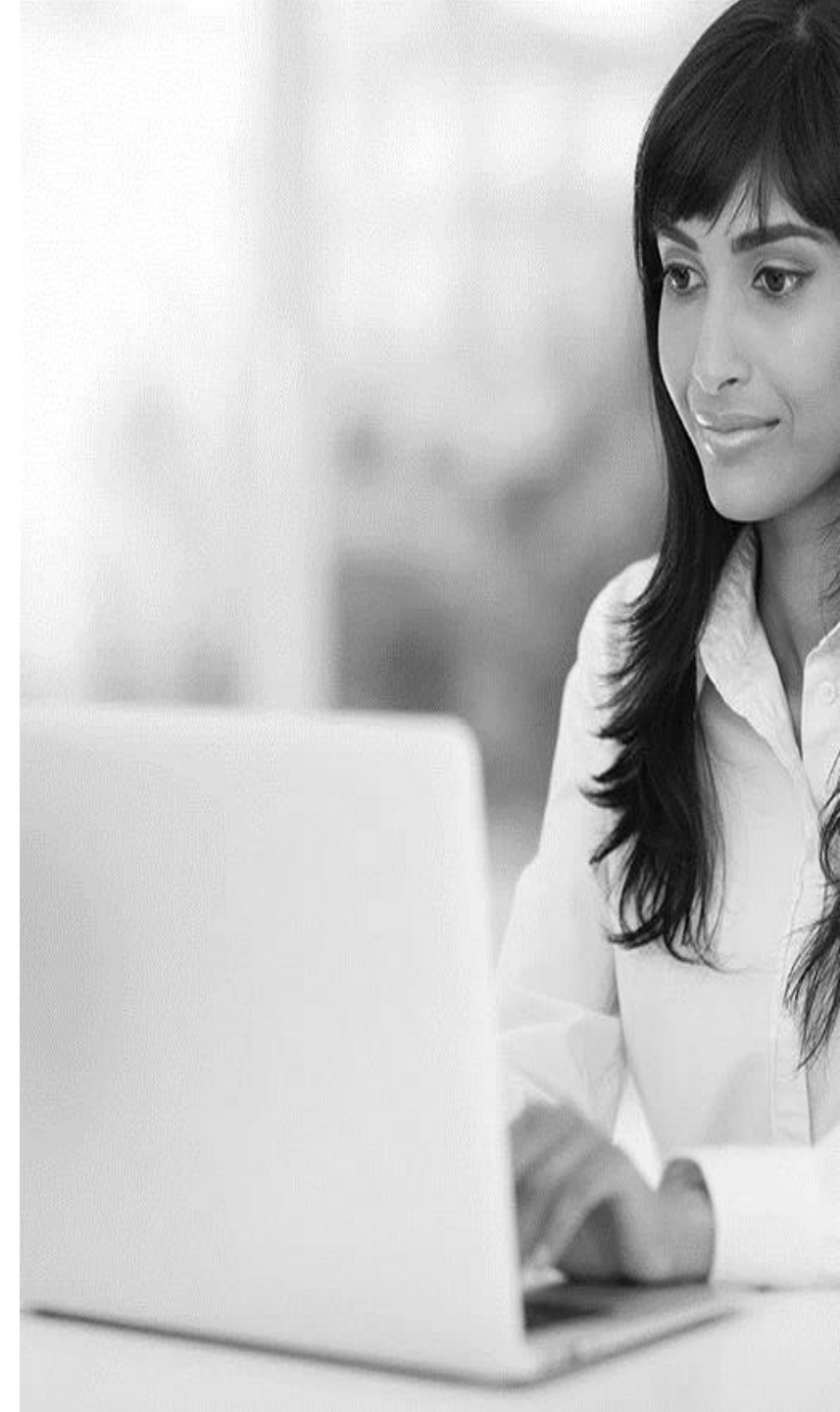
ICHRA ELIGIBILITY

- Participants and dependents MUST BE enrolled in one of the following:
 - Individual market coverage vs. group health insurance
 - Medicare Part A and B, or Part C
 - Exchange market
 - Student health insurance (applicable to certain educational institutions)
 - Grand mothered (or “transition”) coverage
- Non-qualifying coverage:
 - TRICARE
 - Coverage under a spouse’s GHP
 - Health care sharing ministries
 - Coverage consisting of only excepted benefits (i.e., dental, vision specified disease)
- An ICHRA cannot be offered to self-employed individuals, partners in a partnership and more than 2% S corporation owners and dependents of such.



TERMINATION OF INDIVIDUAL COVERAGE

- ICHRA Ceases for participant;
 - Lose or drop individual coverage
 - Can no longer receive reimbursements on prospective basis
 - COBRA will/must be offered if coverage lost due to circumstances that would constitute a COBRA QE.
 - Forfeits the balance in the HRA;
 - Can receive reimbursements prior to termination of coverage



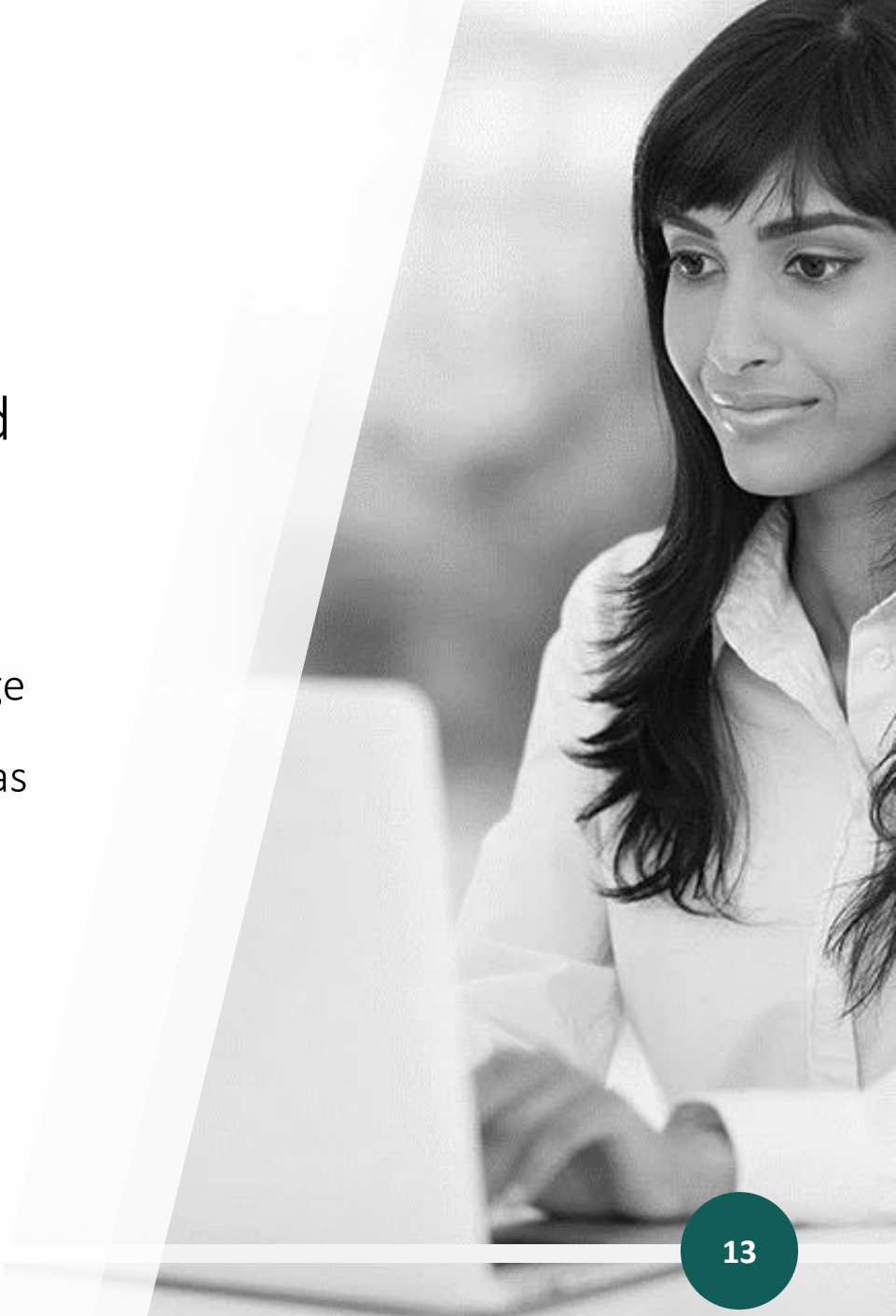
NOTICE REQUIREMENT

- The Employer sponsor of an ICHRA must provide a notice **90 days** prior to plan year.
 - **For first ICHRA plan year:** Provide written notice to employees by 1st day of plan year.
 - **For renewal plan years:** Provide notice to employees 90 days prior to plan year.
 - **New Hires:** Notice must be provided to all employees prior to enrollment.
- Notice must contain certain specified information to eligible individuals.
 - Terms of the plan, including maximum dollar amount, self-only coverage to determine affordability, pro-ration rules for new participants, if applicable, enrollment requirement;
 - Individual to contact with questions;
 - Rules for integration with Medicare;
 - Helps to understand type of HRA being offered; and
 - How the ICHRA offer may deem them ineligible for a premium tax credit/subsidy for ACA exchange-based coverage (if determined to be affordable coverage).



COVERAGE VERIFICATION

- The ICHRA has reasonable procedures to verify and substantiate enrollment in coverage:
 - May be;
 - A document from a third party showing that employee and dependent are covered;
 - An attestation that they are or will be enrolled, date coverage began or will begin and provider of coverage.
 - Employer may rely on substantiation of coverage unless it has actual knowledge that coverage is not in effect.
 - **Annually** if offering premiums only
 - However participant must provide statement for reimbursement if manual, or use card if paying directly to carrier.
 - **Monthly** if offering 213 expenses and/or premiums
 - Employer's responsibility to monitor



REIMBURSEMENT OF PREMIUMS

Can reimburse premiums for:



- Individual Market
- State or Federal Exchange
- Medicare and Medicare Supplement (regardless of size of employer)

Cannot reimburse premiums for:



- Spousal Group Coverage
- Excepted benefits (vision, dental, etc.)
- Fixed indemnity plans
- TRICARE



ICHRA & Medicare Secondary Payer (MSP)

- Unlike traditional HRA, Medicare premiums can be reimbursed regardless of employer size.
 - Reimbursement of Medicare or Medicare supplemental premiums is not considered impermissible under the plan.
- ICHRA may not limit reimbursement of medical expenses under the plan to expenses not covered by Medicare.



SAME TERMS REQUIREMENT

- Employers can offer an ICHRA on a **class-by-class basis** (creating classes around certain employment distinctions).
- Employers that offer the ICHRA must do so on the **same terms (both the same amount and same terms and conditions) to all employees within a class.**
- Terms include;
 - availability of Section 125 pre-tax salary reduction arrangement.
 - Offering a more generous HRA to individuals based on an adverse health factor is prohibited.
 - However, the “same terms” requirement is not violated because one employee picks a more expensive policy than another employee.



Exceptions to the “same terms” requirement

- Ok to increase the maximum dollar amount made available under an ICHRA for participants within a class of employees as the age of the participant increases, so long as the same maximum dollar amount attributable to that increase in age was made available to all participants of the same age within the same class of employees; provided, however, the maximum dollar amount made available to the oldest participant is not more than three times the maximum dollar amount made available to the youngest participant.
- Ok to vary amounts based on the number of a participant's dependents covered by the ICHRA. There is no limit on an employer's ability to increase HRA amounts based on the number of a participant's dependents covered by the HRA, so long as the same maximum dollar amount attributable to that increase in the number of dependents is made available to all participants in that class of employees with the same number of dependents covered by the ICHRA.



PERMITTED CLASSES (11)

- Full-time employees that can be defined under Code Section 105(h) (35 hours or more) or Code Section 4980H 30 hours or more)
- Part-time employees that can be defined under Code Section 105(h) (less than 35 hours) or Code Section 4980H (less than 30 hours)
- Seasonal employees that can be defined under Code Section 105(h) (less than 9 months) or Code Section 4980H (less than 6 months)
- Employees covered by a Collective Bargaining Agreement
- Employees who have not satisfied a waiting period
- Nonresident aliens with no U.S. based income
- Employees working in the same rating area



PERMITTED CLASSES (11) cont'd

- Salaried employees
- Non-salaried employees (e.g. hourly)
- Temporary employees of a staffing firm
- Group formed by combining 2 or more of these classes
- Former employees are treated as being in the same class they were in immediately before separation from service
- Designation classes are determined on a common-law employer basis and not on a controlled group rule.



MINIMUM CLASS RULES

- **Minimum Class Size Rule:**

Applies **only if** employer offers a traditional GHP to one class of employees and an ICHRA to another class based on:

- Purpose is to avoid health factor discrimination and adverse selection.
- Requirement applies to the following classes of employees:
 - Full-time vs. part-time status
 - Salaried vs. non-salaried status
 - Geographic location (rule does not apply if the geographic area defining the class is a state or a combination of two or more entire states)
 - Combination of any class above with any other class (except waiting period class)

- **Minimum Class Size is:**

- **10 employees**, for employers with fewer than 100 employees
- **10% of employees**, for employers with 100-200 employees.
- **20 employees**, for employers with more than 200 employees
- Must be determined based upon reasonable expectation of number of employees to be employed on first day of the plan year.
- The annual determination for class to satisfy minimum is based upon number of employees in each class who are offered the ICHRA as of first day of plan year. Determination is not based on the number of employees who enroll in the ICHRA and is not affected by changes that occur during the year.



New hire sub-class

- A plan sponsor that offers a traditional group health plan to a class of employees may prospectively offer employees in that class hired on or after a certain date in the future an ICHRA, while continuing to offer employees in the class hired before that date a traditional group health plan.
- Create a grandfathered sub-class and a new hire sub-class within a class of employees.
- New hire date must be specified in advance for a class of employees.
- Different new hire dates may be established for different classes of employees.
- Minimum class size requirement not applicable if ICHRA offered to new hire sub-class unless new hire sub-class further divided thereafter.
- No choice between traditional plan and ICHRA for either the grandfathered group or the new employees.



EMPLOYER OPTIONS

- May allow rollover of unused funds;
 - Must be made on same terms to all participants within a class
- Can elect Premium Only, 213 expenses only, or both
 - Can restrict type of 213 expenses for HSA participation or have separate Limited ICHRA plan
- Pro-rated adjustments of ER contributions can be made for newly hired employees and dependents during plan year within the same class.
- There can be no traditional HRA that pays all 213 expenses or deductibles
 - Only Limited Purpose HRA allowed



EMPLOYEE OPTIONS

- The cost of individual health insurance not covered by the ICHRA may be paid on a pre-tax basis under a cafeteria plan (premium reimbursement plan).
- Employee can participate in 125 cafeteria plan to pretax difference in employer (ICHRA) contribution and actual cost of premium
 - Not allowed for Exchange premiums (IRC Section 125(f)93).
- Employee can participate in both ICHRA and a full FSA
 - Employer FSA contribution may not exceed \$500
- Participants may opt-out of the HRA once annually and on termination of employment



Discrimination Testing

- IRC Sec. 105(h) prohibits discrimination in relation to benefits;
 - In both, plan design and plan operation
- Employers must provide uniform contributions to all participants or excess reimbursements become taxable to the HCIs
- ICHRA rules provide exceptions to the above rules in plan design provided;
 - If a premium reimbursement plan does not have to comply;
 - Contributions may increase based upon # of dependents and age (age contributions cannot be more than three times youngest participant.
- Even if an ICHRA follows above design exceptions, can still be discriminatory in operation;
 - If too many HCIs use the maximum benefit, then all reimbursements to HCIs become taxable.
- An ICHRA plan that includes reimbursement of 213(d) expenses must pass IRC Sec, 105(h) self-insured plan tests.



ADDITIONAL CONSIDERATIONS

- ICHRA considered an offer of coverage under ACA
 - If ICHRA deemed affordable, **employee offered** ICHRA will not qualify for premium tax credits though individual ACA market.
 - If **employee enrolls** in ICHRA, they are disqualified from credit, even if ICHRA not affordable.
- ERISA/ACA/COBRA/HIPAA/PCORI/MSP (Medicare Secondary Payer) quarterly reporting.
 - COBRA, for ICHRA, if applicable event and loss of coverage



QUESTIONS?