Design-Based Cost Saving Strategies for Group Health Plans

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Agenda

- Health Reimbursement Arrangements (HRAs)
  - Health Reimbursement Arrangements
    - Group Health Plan HRA
    - QSEHRA
    - ICHRA
    - EBHRA
    - Retiree-Only HRA
- Gap (*aka*, Bridge) Plans
- Level-Funded Plans

HRA Basics: What Is an HRA?

- HRAs are a type of account-based health plan that employers can use to reimburse employees for their medical care expenses
  - Reimbursement is generally not taxable income (*i.e.*, employees don't have to pay federal or state income taxes on the money)
- Funded by employer contributions
- Used to pay for unreimbursed qualified medical care expenses (IRC Section 213(d)) incurred by employees and/or their spouse and dependents (IRC Section 152)
- Employer Flexibility:
  - May allow unused HRA funds to be carried over from one year to the next or forfeit unused funds at the end of the year
  - Decide what medical expenses are covered
  - Set contribution/reimbursement limits
- Other Rules: Substantiation; nondiscrimination under IRC Section 105(h); ERISA, IRC, ACA "group health plans" status

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Benefits of an HRA

- Cost Control & Predictability
  - Employers can set the annual contribution amount for each employee
- Tax Advantages
  - Contributions and reimbursements are not subject to income, social security, or Medicare tax
- Flexibility and Customization
  - Employer can decide what medical expenses to reimburse
- Increased Employee Satisfaction
  - Helps workforce with healthcare needs and costs
- Retention and Recruitment
  - An attractive benefit option

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HRAs are Group Health Plans

- Group Health Plan under IRC, ERISA and PHSA
  - *E.g.*, annual Form 5500 reporting requirements; SPD and plan document requirements, coverage continuation, and ERISA's fiduciary requirements
- Group Health Plan under ACA
  - Subject to ACA's "market reforms"
  - HRAs will fail to satisfy these rules due to their design
- Resolution: Integration!
  - IRS: If "integrated" with another group health plan (*i.e.*, eligibility is limited to those who are enrolled in the employer's group health plan), HRA may comply
  - Regulatory exceptions: QSEHRA, ICHRA, EBHRA

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Group Health Plan HRA

- Only available for employers that sponsor a GHP
  - GHP must provide "minimum value" under the ACA
- Must be offered and available for all employees who are enrolled in GHP
  - Cannot be offered to employees who are <u>not</u> enrolled in GHP
- Employees must be enrolled in GHP to participate
- No federal contribution limit, but employer must set maximum amount available in reimbursement
- <u>Cannot</u> be used to reimburse premiums
  - Including individual market health coverage premiums
- Annual opt-out opportunity required

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QSEHRA

- Small employers (less than 50 full-time/FTE employees) that do not offer a GHP
- Employees must be enrolled in "minimum essential coverage" (*e.g.*, individual, spouse's plan, Medicare)
- Can exclude: seasonal, temporary, nonresident aliens, under age 25, and collectively bargained employees
- Must be offered to similarly situated employees on same terms
  - The maximum annual contribution limit for 2024 is $6,150 for self-only coverage and $12,450 for family coverage
- Can reimburse individual health coverage premiums
- Proof of MEC required; no further reimbursement if MEC ceases
- Provide notice to eligible employees 90 days prior to plan year

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Individual Coverage HRA (ICHRA)

- Can be offered by employers of any size, including those who sponsor a GHP
- To be eligible, employees must be enrolled in individual health coverage or Medicare
- ICHRA cannot be offered to the same class of employees who are offered coverage under the employer's GHP
- Must be provided to all eligible employees within a class (*e.g.*, full-time, part-time, salaried, hourly, employment site) on the same terms
- No annual contribution limit under federal law, but employer must set maximum amount available in reimbursement
- Can reimburse individual health coverage and Medicare premiums
- Proof of individual coverage required
- Annual opt-out opportunity prior to beginning of plan year
- Provide notice to eligible employees 90 days prior to plan year

Excepted Benefit HRA (EBHRA)

- Can be offered by **employers of any size**
- Cannot be integral part of any GHP; must be an **excepted benefit**
- Must be offered alongside GHP
  - Employees eligible to participate in an employer's GHP may participate in the EBHRA; however, EBHRA coverage is not limited to those employees enrolled in the health plan (like a GHP HRA)
- Must be offered to all similarly situated individuals under the same terms and conditions
- Cannot reimburse premiums for individual coverage, Medicare, or group health coverage
  - Can reimburse premiums for COBRA coverage, coverage consisting solely of excepted benefits (*e.g.*, limited dental or vision coverage), and short-term, limited duration insurance (if not prohibited under state law)
- Annual federal contribution limit ($2,100 for 2024), but employer can set lower limit

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Retiree-Only HRA

- Can be offered by employers of any size
- Available for former employees/retirees
- No integration requirement
  - Participants can be enrolled in any type of coverage (or no coverage)
- Can reimburse premiums for individual coverage and Medicare, incurred after retirement
- No annual contribution limit under federal law, but employer must set maximum amount available in reimbursement
- Participants may carry forward unused balances to the next plan year; however, employers can set an aggregate carryover limit

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Gap (*aka*, Bridge) Plans

- **Gap (*aka*, Bridge) Plans generally are designed to "fill the gap" by covering out-of-pocket costs before participants reach their deductibles**
- **Function similarly to traditional HRAs, but are not account-based plans, and could be fully insured and/or partially employee-funded**
- **Traditional structure is to combine with HDHP and simply cover exactly what the HDHP would cover, but beginning at lower deductible points and up to the HDHP deductible**

EXAMPLE:	Single	Family
HDHP Deductible	$5,000	$10,000
Gap Plan Coverage	$500 - $5,000	$1,000 - $10,000
Employee Deductible Responsibility	$500	$1000

Gap (*aka*, Bridge) Plans

- Gap Plan = ERISA group health plan
- Are Gap Plans subject to ACA mandates and other HIPAA portability rules? It depends on whether the Gap Plan meets the following requirements to be an "**excepted benefit**":
  1. Must be issued by an entity that does not provide the primary coverage under the GHP (HHS interprets this as requiring the Gap Plan to be fully insured)
  2. Cost of the Gap Plan must not exceed 15% of the cost of primary coverage (calculated in same manner as COBRA, but without extra 2% COBRA admin fee)
  3. Does not differentiate among individuals in eligibility, benefits, or premiums based on a health factor
  4. Must be specifically designed to supplement gaps in the primary coverage (*e.g.*, coinsurance or deductibles), and/or provide non-EHB benefits that are not covered by the primary coverage

Gap (*aka*, Bridge) Plans

- If Gap Plan is an excepted benefit, then it is exempt from HIPAA portability / ACA / PHSA mandates
  - Including exemption from most Consolidated Appropriations Act, 2021 (CAA) and Transparency in Coverage (TiC) requirements
- If Gap Plan is not an excepted benefit, it must be integrated with the primary coverage
  - And it may still be exempt from certain requirements if it is considered to be an "account-based" plan
    - E.g. exempt from TiC requirements and CAA's RxDC reporting
  - Account-based plan = employer-provided group health plan that provides reimbursements of medical expenses subject to a maximum fixed dollar amount for a given period
- If Gap Plan is self-funded, remember PCORI fees, 105(h) nondiscrimination, HIPAA Privacy and Security rules, etc.

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Level-Funded Plans

- **What are Level-Funded Plans?**
  - There are many different ways to design level-funded plans, but generally, they are self-funded plans that use stop-loss insurance with lower-than-normal attachment points and set monthly contribution rates at levels needed to fund claims up to those lower attachment points
  - May include mechanism whereby S/L policy can be tapped to cover the short-term deficit, essentially as a loan to the plan sponsor

- **Advantages:**
  - Helps employers that wish to self-insure but lack the size needed for a self-insured plan to make economic sense
  - Employer can self-insure but mitigate the risk of potential cash flow issues and maintain more predictable monthly costs

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Level-Funded Plans

- **Potential Disadvantages**:
  - Considered to be self-insured (*aka*, self-funded) for most compliance purposes, making them subject to additional legal requirements that are not applicable to fully insured plans
  - Cost stability is only possible to the extent that the plan's actuarial forecasts are relatively accurate
  - Regulatory uncertainty:
    - DOL/HHS/Treasury published proposed regulations last summer addressing several issues affecting the health insurance industry (*e.g.*, STLDI, fixed indemnity insurance)
    - Proposed regulations included a section soliciting public comments on level-funded plans
    - Signals possible upcoming regulation and/or heightened enforcement efforts

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Level-Funded Plans – Compliance Issues

ACA Reporting

- As a self-funded plan sponsor, employer must file and distribute Forms 1094/1095, even if not an ALE

COBRA Premiums

- Self-funded plans determine COBRA rates based either on actuarial estimates or past costs

Prescription Drug Data Collection (RxDC) Reporting Requirements

Potential Trust and Exclusive Benefit Rule Issues

- Excess funding, including when refunded/rebated at year-end may be ERISA plan assets

PCORI Fees

ERISA Preemption of State Laws

Code § 105(h) Nondiscrimination

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