

New Rules for Health Reimbursement Accounts under the ACA

Update from VEHI

revised June 2014

New federal guidance has clarified the conditions under which an HRA is permissible. Generally speaking, for plan years on or after January 1, 2014, as part of the *Affordable Care Act (ACA)*, HRAs offered to active employees must be **integrated** with an **employer health plan** in order to be compliant with ACA requirements relating to the prohibition on annual and lifetime maximums. The integration rules are very specific and must be followed carefully in order to meet the requirements under the ACA.

Some Vermont school districts currently offer “**stand-alone**” Health Reimbursement Accounts (HRAs) to employees. These accounts can be accessed by employees even if they are not enrolled in the school’s health insurance plan, under certain specific conditions.

Question 1. What does it mean to be integrated?

In order to satisfy the ACA’s integration rules, all of the following requirements must be met:

- The employer must offer a group health plan that does not consist solely of excepted benefits.
- The employee covered under the HRA must actually be enrolled in a **group** health plan.
- Under the terms of the HRA, an employee must be permitted to opt out of and waive future reimbursements from the HRA at least annually.
- Upon termination of employment, either the remaining amounts in the HRA are forfeited, or the employee must be permitted to opt out of and waive future reimbursements from the HRA.

All of the above requirements must be met whether or not the group health plan offered by the employer provides **minimum value** (see questions 2 and 3 for more details on this).

Question 2. Can an HRA be integrated with a health plan not offered by that employer?

Yes, if structured properly, but it may be administratively difficult for an employer to assure that its HRA is properly integrated, thus putting the employer at risk for a penalty for failure to comply with ACA requirements. In addition to meeting the requirements in Question #1, the employer **must also have the employee attest** that:

- He/she is actually enrolled in **group health plan** coverage from another employer that is ACA compliant;
- The other employer's **group health plan** meets the ACA's minimum value requirements, which means, generally, the plan pays at least 60% of the member's covered medical expenses.

We do not anticipate that many employers will wish to go through the administrative burden with regard to assuring that the HRA is integrated with another health plan. Failure to confirm such integration will cause the HRA to violate the ACA.

In the event an employer does wish to proceed in this manner, however, we advise the **attached sample attestation** be used on an annual basis. It includes the following elements:

- a requirement the other employer attest to the employee's enrollment in its group health coverage and that the coverage is ACA compliant and meets minimum value;
- the employee attests that s/he is enrolled in the coverage and anticipates being enrolled during the term of his/her current contract with the school district;
- the employee attests, further, that if at any point in the year s/he is no longer covered under the other employer's group plan, s/he is obligated to tell the school district as soon as this is known, preferably before coverage terminates; and that s/he understands that failure to do so could be construed under certain circumstances as fraud and result in tax penalties.

Question 3. Are there special conditions if a group health plan fails to provide minimum value?

Yes. However, none of the health plans offered through VEHI or the Vermont Health Connect (VHC) fail to meet minimum value.

Question 4. Can HRA amounts be used to satisfy the ACA's affordability requirements?

Yes. If an employer offers an employee both an employer-sponsored health plan and an integrated HRA, and the employee enrolls in the plan, amounts newly contributed for the current plan year may be considered in determining whether the overall health plan meets the ACA's determination of affordability.

Question 5. If an employee ceases to be covered under the group health plan with which the HRA is integrated, can the employee use unused funds previously credited to the HRA after he or she terminates group health plan coverage?

Yes. An HRA will not fail the ACA's requirements if it permits employees to continue to access any unused funds once participation in the group health plan in which the HRA was integrated ceases. However, continued coverage under that HRA may prevent an employee from receiving credits or subsidies through Vermont Health Connect, because that HRA containing any unused balance is still considered to be minimum essential coverage. On the other hand, the coverage under that HRA will also prevent the employee from being penalized, as it meets the criteria to carry minimum essential coverage under the individual mandate.

Question 6. Can an HRA be used to pay the premium toward the purchase of an individual health plan through VHC?

No. This is a violation of the annual limit prohibition and preventive health services requirement under the ACA.

Question 7. Can an HRA be used to pay the premium toward the purchase of group health plan coverage through VHC or another source?

Yes, but only if the HRA is integrated with a group health plan. This is at the option of the employer designing the HRA.

Question 8. Must the reimbursements made from an integrated HRA be limited to specific types of reimbursements?

No, provided the health plan with which it is integrated meets minimum value requirements, which VEHI and VHC plans do. The employer may permit the HRA to reimburse any qualified expense, even if it is not covered under the integrated health plan. However, the employer may also limit coverage to certain expenses, such as employee responsibility for payment of copays, coinsurance and deductibles under the integrated health plan. The design of the HRA reimbursements are flexible and up to the employer sponsoring the HRA.

Question 9. Can an HRA be established to reimburse only dental or vision expenses (with no requirement that a participant enroll in a group health plan)?

It depends. An HRA that only reimburses dental/vision expenses would generally not satisfy the definition of a HIPAA-excepted benefit. As such, it would violate the ACA.

However, a dental and/or vision-only HRA could be considered an excepted benefits (thus exempt from healthcare reform).

Through at least 2014, proposed regulations allow plan sponsors to consider dental and vision benefits offered to employees with the right to opt-out of the coverage as excepted benefits. No separate contribution is required.

Further, while it is unlikely that final regulations will be more restrictive than the proposed regulations, the proposed rules will not be effective prior to January 1, 2015 and will provide plan sponsors with ample time to comply with any change.

Question 10. Can a stand-alone retiree HRA be offered?

Yes. A stand-alone retiree-only plan is an excepted benefit and is not subject to the ACA's annual limit prohibition and preventive health services requirements. It is critical that there be no more than one active employee participating in a retiree HRA, otherwise it will not be considered an excepted benefit. Note: a retiree covered under a stand-alone retiree HRA is considered to have minimum essential coverage and will not be able to obtain a premium tax credit on any state exchange.