

INDIVIDUAL COVERAGE HEALTH REIMBURSEMENT ARRANGEMENT

What is an ICHRA? Beginning on or after January 1, 2020, employers can offer an individual coverage health reimbursement arrangement (“ICHRA”) as an alternative to traditional group health plan coverage, subject to certain conditions. ICHRAs are individual, account-based health plans funded solely by employer contributions which can be used to reimburse employees for the cost of individual health insurance coverage and other eligible medical expenses on a pre-tax basis.

ICHRAs must meet five requirements:

1. Enrollment – ICHRA participants must be enrolled in individual health insurance coverage or Medicare.
2. Classes – If desired, employers can divide employees into classes¹ and can choose to offer an ICHRA to one or several classes of employees. ICHRAs must be offered on the same terms and conditions to all employees within a class, and employee classes eligible for the ICHRA cannot be offered a traditional group health plan by the employer.
3. Opt-out notice – An opt-out notice is required to be given to participants annually and upon termination of employment.
4. Substantiation of individual health insurance coverage or Medicare coverage – Substantiation is required at the time of enrollment and at the time of each reimbursement.
5. Annual Notice – The employer must provide an explanatory ICHRA notice annually to all eligible employees, at least 90 days before start of each plan year.

How much can an employer contribute to an ICHRA for each employee? There is no minimum or maximum contribution required each year. Employers can contribute any amount they wish to each employee’s ICHRA. However, employers must offer the ICHRA on the same terms to all employees in an eligible class of employees, except that employers can increase the amount available under an ICHRA based on the employee’s age or number of dependents.² The employer can allow unused amounts in any year to roll over from year to year, or can require unused amounts to be forfeited at the end of a year. Note: The template ICHRA plan document provided by BBT does not permit unused amounts to be rolled over – all unused amounts are forfeited at the end of a year.

Because an employer must offer an ICHRA in the same amount and otherwise on the same terms and conditions to all employees within a class of employees,³ the employer will need to determine whether it: (1) provides the same contribution amount to all employees, (2) divides employees into permitted classes and offers an ICHRA with a certain contribution amount to one (or more) classes, or (3) increases the contribution based on family size and for older employees.

What expenses can an ICHRA reimburse? An ICHRA can reimburse employees for any Internal Revenue Code section 213(d) medical expenses that have not been otherwise reimbursed or submitted for reimbursement through another plan. An ICHRA can reimburse employees for their (and their eligible dependents’) medical expenses up to the maximum dollar amount that the employer makes available

¹ The allowable classes are listed in the regulations and on page 2 of this summary.

² If contributions vary by age, the maximum amount available to the oldest class participant cannot be more than three times the maximum amount available to the youngest class participant.

³ Permissible classes are described on page 2 of this summary.

each year. Employers can choose to limit which medical expenses are reimbursed, if they wish. Expenses must be incurred while the individual was covered by the ICHRA.

ICHRAAs can be used to reimburse premiums for individual health insurance chosen by the employee⁴ on a pre-tax basis. Any portion of an individual health insurance premium for coverage purchased directly from an insurance company and not covered by the employee's ICHRA can also be paid on a pre-tax basis by the employee using a salary reduction arrangement under the employer's cafeteria plan, if the employer maintains one and permits this as a reimbursable expense.

ICHRAAs can also be used to pay for coverage under Medicare Parts A, B, C and D and for Medicare supplement coverage.

If an ICHRA permits reimbursement of eligible medical expenses other than reimbursement of individual health insurance or Medicare premiums, the ICHRA is subject to nondiscrimination rules described in section 105(h) of the Code. However, if the ICHRA only reimburses individual insurance or Medicare premiums, the Code section 105(h) nondiscrimination requirements do not apply.

Note: The template ICHRA plan document provided by BBT only permits reimbursement of individual health insurance policy premiums. It does not permit reimbursement of other eligible medical expenses.

In order to participate in an ICHRA, what type of individual health insurance coverage must employees have? Employees must be enrolled in individual health insurance (or Medicare) for each month the employee (or the employee's eligible dependent) is covered by the ICHRA. The employee must substantiate and verify such coverage to the employer upon enrolling in the ICHRA and at the time of each reimbursement. Individual health insurance coverage can be purchased through the exchange /marketplace or directly from an insurance company. It cannot consist of: (1) short-term, limited-duration insurance, (2) coverage consisting of dental, vision or similar "excepted benefits" or (3) coverage provided under a health care sharing ministry.

Must an employer offer the ICHRA to all employees? An employer must offer the ICHRA on the same basis to all individuals within a class of employees, except that the amounts offered may be increased for older employees or employees with more dependents. An ICHRA cannot be offered to any employee to whom the employer offers a traditional group health plan. However, an employer can decide to offer an ICHRA to certain classes of employees, and offer a traditional group health plan (or no health coverage) to other classes of employees. Permissible classes can also be combined. Employers may make distinctions based on the following classes:

- Full-time employees
- Part-time employees
- Employees working in the same geographic location (generally, the same insurance rating area, state, or multi-state region)
- Seasonal employees
- Employees in a unit of employees covered by a particular collective bargaining agreement
- Employees who have not satisfied a waiting period
- Non-resident aliens with no U.S. source income
- Salaried workers

⁴ Individual health insurance can be purchased through the exchange/marketplace or directly from an insurance company.

- Non-salaried workers (such as hourly workers)
- Temporary employees of staffing firms
- Any group of employees formed by combining two or more of the above classes⁵

Note: Clergy vs. lay employees is not a permissible eligibility class distinction.

Can an employer offer a traditional group health plan to some employees and an ICHRA to other employees? Yes, as long as the groups of employees that are offered an ICHRA satisfy the class eligibility requirements described above. In addition, an employer offering traditional group health coverage to some classes of employees and an ICHRA to other employees based on full-time vs. part-time status, salaried vs. non-salaried status, or geographic location (if the location is smaller than a state), must comply with class size requirement rules. For an employer with fewer than 100 employees, the minimum class size is 10 employees. For an employer with 100-200 employees, the minimum class size is 10% of the total number of employees, and for an employer with more than 200 employees, the minimum class size is 20 employees.

This means, for example, that if an employer with 10 or fewer employees offers a traditional group health plan to its five full-time employees and wants to offer an ICHRA only to its part-time employees, it cannot do so because the minimum class size for distinguishing between full-time and part-time status is 10.

What are the notice requirements? ICHRAs must provide a notice to eligible participants regarding the ICHRA and its interaction with the Affordable Care Act premium tax credit. The notice must be provided 90 days before the beginning of the ICHRA plan year and annually thereafter. The federal agencies that regulate ICHRAs have issued a model notice that can be used for this purpose.

Employers who want to offer an ICHRA effective as of January 1, 2020 must provide the required notice no later than October 2, 2019. Employees who want to take advantage of an ICHRA with a start date of January 1, 2020 must enroll in individual health insurance during the open enrollment period at the end of 2019, unless they have Medicare coverage.

What are the substantiation requirements? The ICHRA must have reasonable procedures to annually substantiate that participating employees and their families are enrolled in individual health insurance or Medicare while covered by the ICHRA. Substantiation is also required with each reimbursement request. The Agencies issued a model attestation form that can be used for this purpose.

If an ICHRA reimburses eligible medical expenses in addition to individual health insurance premiums, substantiation of the eligible medical expense and compliance with HIPAA privacy and security rules is also required.

What are the opt-out requirements? Because employees participating in an ICHRA are not eligible for Affordable Care Act premium tax credits, employees must be permitted to opt out of an ICHRA at least annually. They may claim the premium tax credit if they are otherwise eligible and if the ICHRA is considered unaffordable.⁶

⁵ As mentioned above, if the ICHRA reimburses medical care expenses in addition to reimbursement of individual or Medicare insurance premiums, nondiscrimination rules will apply and could affect permissible ICHRA classes.

⁶ The Department of Health and Human Services is expected to provide resources later in 2019 to help individuals determine if they are eligible for a premium tax credit.

How does an employer offering an ICHRA treat new hires? If an employer offers an ICHRA to all of its employees, new employees should be permitted to enroll once eligible. An employer that offers an ICHRA to a class of employees can allow a new hire in that class to participate in the ICHRA upon hire. The employer may choose to contribute the entire amount contributed to other similarly situated employees, or contribute based on a reasonable pro-ration of the annual amount contributed.

Employers are also allowed to offer new hires in an eligible class an ICHRA, while grandfathering existing employees in the employer's traditional group health plan.

If an employer is an applicable large employer for purposes of the Affordable Care Act (employs 50 or more full-time equivalent employees), will offering an ICHRA satisfy the employer mandate? Although an offer of an ICHRA is considered to be an offer of coverage under the employer mandate provisions of the Affordable Care Act, whether an applicable large employer would owe a payment under the employer mandate depends on whether the ICHRA is "affordable" under Affordable Care Act rules and is based in part on the amount the employer makes available under the ICHRA. The IRS will provide additional information in the future on how the employer mandate applies to ICHRAs.

ICHRAs and Health Savings Accounts ("HSAs"). In certain circumstances, ICHRAs can be integrated with health savings accounts, or HSAs. Integration with HSAs is not discussed in this summary.

ICHRAs and HIPAA. If the employer allows the ICHRA to reimburse eligible medical expenses in addition to individual health insurance coverage premiums, it is likely the employer will have access to protected health information when substantiating reimbursement claims. If the employer has access to protected health information, it must comply with all applicable HIPAA privacy rules.

ICHRAs and continuation coverage. Federal law does not require church health plans to provide continuation coverage after termination of employment. However, the employer may be required to provide ICHRA continuation coverage under applicable state law.