Individual Coverage Health Reimbursement Arrangements (ICHRA)

ICHRAs are employer-sponsored self-insured health reimbursement arrangements. ICHRAs reimburse medical expenses and can be integrated with individual health insurance policies, including Medicare. Implementing an ICHRA can be beneficial to employers. Below is a high-level overview of the compliance requirements, however this does not address all aspects of compliance.

Plan Design

- Only common law employees (e.g., W-2 employees) can be offered an ICHRA.
  - Self-employed individuals, independent contractors or partners cannot participate.
- Employees cannot be offered a choice between the ICHRA and traditional group health plan (e.g., major medical or MEC).
- An employer that chooses to offer an ICHRA to all employees, or offers a traditional group health plan to one class of employees and an ICHRA to another class must use the following classifications:
  - Full-time
  - Part-time
  - Seasonal
  - Salaried
  - Non-salaried workers (e.g., hourly)
  - Employees covered under a CBA
  - Employees in a waiting period
  - Non-resident aliens with no U.S. income
  - Temporary employees of staffing firms
  - Employees working in the same geographic locations (i.e., insurance rating area, state or multi-state region)
  - Employees who are in a combination of two or more classes
- ICHRA must be offered on the same terms and conditions to every individual within the class
- Employers that use full-time, part-time or seasonal categories must apply either the IRC Section 105(h) nondiscrimination or IRC Section 4980H ACA Employer Mandate definitions. Selected definitions must be determined prior to the start of the plan year and applied consistently throughout the plan year.
- Minimum class size requirement must be met if the employer offers a traditional group health plan to one class and an ICHRA to another, or employer offers an ICHRA to salaried, hourly, full-time, part-time, or employees in same geographic location.
  - Size requirements apply to only the individuals being offered the ICHRA
  - Size threshold is determined by the number of employees offered the ICHRA on the first day of the ICHRA plan year.
  - Changes throughout the plan year do not affect the size requirements.

Less than 100 Employees	Min. 10 employees
100-200 Employees	Min. 10% of total employees
More than 200 Employees	Min. 20 employees

- Eligible individuals must be given the opportunity to opt-out of the ICHRA before the start of the plan year.
- Upon termination of employment either the remaining amounts in the HRA are forfeited (subject to COBRA) or the participant must be permitted to opt out and waive future reimbursements.

Funding

- No limit.
- Employer contribution only. No employee contributions.
- Employer contribution must be offered on the same terms and conditions to all individuals in the same class.
- Contributions may vary only by age, number of dependents (family coverage), and eligibility date (prorated amount).
- Employers can include carryover provision of unused amounts.

Eligible Expenses

- Only IRC 213(d) medical expenses can be reimbursed, including premiums for individual medical, Medicare, and COBRA premiums. Reimbursement for group coverage is not permitted.
- Employers can limit reimbursements.

Notice and Attestation

- Employers must provide notice at least 90 days prior to the start of the plan year.
- If ICHRA is established less than 120 days prior to start of the plan year, notice must be given no later than when the ICHRA is first effective.
- Mid-year enrollees: Notice must be provided no later than the first day the employee is first eligible.
- Employers must receive attestation from employees confirming enrollment in an individual policy on an annual basis and ongoing basis each time an enrollee seeks reimbursement.
- Model Notice and Attestation are available on the Department of Labor website.

ICHRA Reporting and Disclosure Requirements

- ERISA wrap document and SPD requirements, SMMs, SARs, Form 5500 filings
- COBRA Notices for the ICHRA
- HIPAA Special Enrollment Rights
- HIPAA Notice of Privacy Practices and BAA Agreements
- PCORI fee filing
- ACA 1094/5 filings

ICHRA ACA Affordability

- ALEs must determine whether an ICHRA is affordable under the Employer Mandate. ICHRA proposed regulations provide several safe harbors employers can use in conjunction with established ACA Affordability Safe Harbors to determine affordability under 4980H. The way these can be applied has strict guidelines, thus employers should consult with a tax advisor when reviewing these rules.

Other Laws

ICHRAs are also subject to:

- Medicare Secondary Payer Rules
- Nondiscrimination under 105(h) when ICHRAs reimburse other than just premiums
- HSA coordination
- FMLA
- State law limitations may apply