

WHAT YOU NEED TO KNOW



FAQ on HIPAA Special Enrollment; QSE HRAs Released

On December 20, 2016, the Department of Labor (DOL), Department of Health and Human Services (HHS), and the Treasury (collectively, the Departments) issued [FAQs About Affordable Care Act Implementation Part 35](#). The FAQ covers a new HIPAA special enrollment period, an update on women's preventive services that must be covered, and clarifying information on qualifying small employer health reimbursement arrangements (QSE HRAs).

HIPAA Special Enrollment Period

Under HIPAA, if an individual loses eligibility for coverage in the individual market, then that individual is entitled to special enrollment in group health plan coverage.

The coverage eligibility loss may include coverage purchased through a Marketplace (other than coverage eligibility loss due to failure to pay premiums on a timely basis or termination of coverage for cause, such as making a fraudulent claim or an intentional misrepresentation of material fact). Further, the individual is entitled to special enrollment in group health plan coverage for which the individual is otherwise eligible, regardless of whether the individual may enroll in other individual market coverage, through or outside of a Marketplace.

To be clear, if an individual has Marketplace coverage and the carrier is discontinuing the plan, the discontinuation event is not a loss of eligibility for coverage; in this case, the individual is not entitled to a special enrollment period.

Women's Preventive Services

The Health Resources and Services Administration (HRSA) updated its [Women's Preventive Services Guidelines](#) on December 20, 2016, to recommend preventive services and items.

Non-grandfathered group health plans and health insurance issuers must cover, without cost sharing, women's preventive services consistent with the updated guidelines for plan years beginning on or after December 20, 2017. Until that date, non-grandfathered group health plans and health insurance issuers are required to provide coverage without cost sharing consistent the previous HRSA guidelines and the Public Health Services Act for recommended services and items.

Generally, under the HRSA guidelines and other federal laws, group health plans established or maintained by religious employers (and group health insurance coverage provided with these plans) are exempt from the requirement to cover contraceptive services.

Qualified Small Employer Health Reimbursement Arrangements

On December 13, 2016, the 21st Century Cures Act (Cures Act) introduced a new type of tax-preferred arrangement called the Qualified Small Employer Health Reimbursement Arrangement (QSE HRA) that small employers may use to help their employees pay for medical expenses.

Under the Cures Act, the QSE HRA is not a group health plan. A QSE HRA is an arrangement offered by an eligible employer that meets the following criteria:

- The arrangement is funded solely by an eligible employer, and no salary reduction contributions may be made under the arrangement.
- The arrangement provides, after the employee provides proof of coverage for the payment to, or reimbursement of, an eligible employee for medical care expenses incurred by the employee or the employee's family members (as determined under the terms of the arrangement).
- The amount of annual payments and reimbursements do not exceed \$4,950 (\$10,000 for family) with amounts to be indexed for increases in cost of living.
- The arrangement is provided on the same terms to all eligible employees of the eligible employer.

To be an eligible employer that may offer a QSE HRA, the employer may not be an applicable large employer (ALE) and may not offer a group health plan to any of its employees.

The Departments' prior guidance concluded that employer payment plans (EPPs) and non-integrated health reimbursement arrangements (HRAs) are group health plans that fail to comply with the group market reform requirements that prohibit annual dollar limits and that require the provision of certain preventive services without cost sharing.

Because a QSE HRA is statutorily excluded from the definition of a group health plan, the group market reform requirements do not apply to a QSE HRA. With respect to EPPs and HRAs that do not qualify as QSE HRAs, the Departments' prior guidance continues to apply.

The statutory exclusion of QSE HRAs from the group health plan definition is effective for plan years beginning after December 31, 2016. With respect to plan years beginning on or before December 31, 2016, the Cures Act provides that the relief under IRS [Notice 2015-17](#) applies.

Under the extension provided by the Cures Act, for plan years beginning on or before December 31, 2016, the tax penalty will not be asserted for any failure to satisfy the market reforms by EPPs that pay, or reimburse employees for, individual health policy premiums or Medicare Part B or Part D premiums, with respect to employers otherwise eligible for the relief under Notice 2015-17. These employers are not required to file IRS Form 8928 solely because they had such an arrangement for the plan years beginning on or before December 31, 2016.

The Cures Act's extension of the relief is limited to EPPs and does not extend to stand-alone HRAs or other arrangements to reimburse employees for medical expenses other than insurance premiums. Also,

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as an employer-provided group health plan, coverage by an HRA or EPP that is not a QSE HRA and that is eligible for the extended relief under the Cures Act would be minimum essential coverage. This means that a taxpayer would not be allowed a premium tax credit for the Marketplace coverage of an employee, or an individual related to the employee, who is covered by an HRA or EPP other than a QSE HRA.

Practically speaking, the Departments' prior regulations and guidance continue to apply to EPPs and HRAs that do not qualify as QSE HRAs, including arrangements offered by employers that are not eligible employers as defined under the Cures Act, such as ALEs.

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