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Guidance Issued on QSEHRAs

Ed MacConnell | Total Benefit Solutions Inc. | (215) 355-2121 | edmac@totalbenefits.net

The IRS recently issued Notice 2017-67 which provides guidance related to the administration of Qualified Small Employer Health Reimbursement Arrangements (QSEHRAs).

Background

Under the Affordable Care Act, a health reimbursement arrangement (HRA) must be integrated with a group health plan (as it could not meet the market reform provisions on its own) and was not able to reimburse employees for individual premiums. However, on December 13, 2016, President Obama signed into law the “21st Century Cures Act” which established QSEHRAs (a special standalone HRA).

According to the 21st Century Cures Act, a QSEHRA is an arrangement that meets the following criteria:

1. The arrangement is funded solely by an eligible employer (less than 50 full-time employees (including full-time equivalent employees) in the preceding calendar year not offering a group health plan to any of its employees);
2. The arrangement provides, after the eligible employee provides proof of coverage, for the payment or reimbursement of the medical expenses incurred by the employee or the employee’s family members;
3. The amount of payments and reimbursements described above cannot exceed certain thresholds (\$5,050 self-only/\$10,250 for family coverage for 2018); and
4. The arrangement is generally provided on the same terms to all eligible employees of the eligible employer.

On October 17, 2017, President Trump issued an Executive Order directing federal agencies to revise guidance to increase the usability of HRAs, expand employers' ability to offer HRAs to their employees, and allow HRAs to be used in conjunction with non-group coverage. The authors of Notice 2017-67 claim that the guidance therein addresses each of those objectives.

New Guidance

Notice 2017-67, structured as 79 Questions and Answers (Q&As), explains several specifics related to QSEHRAs. Here are some of the highlights:

- Eligible employer (Q&As 1-7):
 - The 50-employee threshold and whether the employer offers a health plan takes into account the entire controlled group.
 - An employer that goes over this threshold is not an eligible employer as of January 1st of the year it becomes an applicable large employer in accordance with ACA rules.
 - An employer will fail to be an eligible employer for any month during which it offers a group health plan, allows continued access to amounts accumulated from a prior HRA or carried over in an FSA.
 - Offering a health plan to former employees or contributing to employees' HSAs (including allowing HSA contributions through a cafeteria plan) will not prevent an employer from being an eligible employer.
- Eligible employee (Q&As 8-11):
 - A QSEHRA may only be provided to employees

(not former employees, retirees, or non-employee owners).

- If a previously ineligible employee becomes an eligible employee, coverage must be provided by the next day.
- Participation in the QSEHRA cannot be waived.
- Same terms requirement (Q&As 12-26): A QSEHRA must be operated on a uniform and consistent basis with respect to all eligible employees.
- A permitted design includes one that offers the same dollar amount benefit whether self-only or family coverage is elected.
- It is also permitted to structure a plan to reimburse up to the self-only and family statutory limits or up to an equal percentage thereof without referring to a baseline policy.
- Statutory dollar limits (Q&As 27-34):
 - Statutory dollar limits for non-calendar year or short plan year QSEHRAs are prorated based upon the number of months in the applicable calendar year. The same prorating would apply as to a newly eligible employee added mid-year.
 - A carryover is permitted, but only if the annual amount available to the employee does not exceed the threshold for that year, taking into account the carryover.
- Written notice requirement (Q&As 35-39): An eligible employer that provides a QSEHRA during 2017 or 2018 must furnish the initial notice to eligible employees by the later of February 19, 2018 or 90 days before the first day of the plan year.

- MEC requirement (Q&A 40): Reimbursements through the QSEHRA are taxable for any month that minimum essential coverage (MEC) is not maintained.
- Proof of MEC requirement (Q&As 41-43): A QSEHRA may only provide reimbursements after proof of coverage is provided. Such proof, which must be provided annually, can be third-party documentation (i.e., an insurance card) accompanied by an attestation or an attestation accompanied by the date coverage began and the name of the provider. If this proof is not provided, a reimbursement cannot be made, even on a taxable basis. A model attestation is provided as an Appendix to the Notice.
- Substantiation requirement (Q&As 44-45): The eligible employee will follow substantiation requirements if it complies with the FSA substantiation requirements.
- Reimbursement of medical expenses (Q&As 46-56):
 - A QSEHRA cannot provide a cash-out of unused permitted benefits at the end of the year.
 - It cannot impose a deductible or other cost-sharing requirement.
 - It cannot reimburse amounts incurred before QSEHRA coverage begins.
 - A QSEHRA can reimburse over-the-counter drugs without a prescription.
- Reporting requirement (Q&As 57-64): Any benefit provided through the QSEHRA must be reported on the employee's Form W-2.
- Coordination with the Premium Tax Credit (Q&As 65-71): If an employee is provided QSEHRA coverage for a coverage month, the premium tax credit allowable is reduced by 1/12 of the permitted benefit under the QSEHRA for the year.
- Failure to satisfy the requirements to be a QSEHRA (Q&As 72-74): Plans that operate as QSEHRAs but fail to satisfy the requirements to be QSEHRAs will result in all amounts paid under the plan being includable in each employee's gross income and wages.
- Interaction with HSA requirements (Q&As 75-78): A QSEHRA that is structured to only reimburse premiums will not jeopardize HSA-eligibility.
- Effective date (Q&A 79): The guidance provided in Notice 2017-67 is effective for plan years beginning on or after November 20, 2017 (but can be relied on by plans established before that date). Nevertheless, if an eligible employer has established a QSEHRA and operated it consistent with the statutory provisions (but not with this guidance), the employer may continue to operate it in such a manner until the last day of the plan year that began in 2017.

For Notice 2017-67, visit:

<https://www.irs.gov/pub/irs-drop/n-17-67.pdf>