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Health Care Reform: New Guidance Delays One Mandate, Clarifies Another

On January 24, 2013, the Departments of Labor, Health and Human Services and Treasury (the “Departments”) (i) extended the deadline to inform employees about the health insurance exchanges and (ii) clarified the exemption for certain health reimbursement arrangements (“HRAs”) from Health Care Reform’s prohibition on lifetime and annual dollar limits.

Deadline to Provide Notice of Exchanges Extended. Health Care Reform requires employers to provide a written notice to employees about the coverage available through the health insurance exchanges and about the premium credit that may be available for that coverage. Previously, the deadline for providing this notice was March 1, 2013.

This deadline has been postponed until regulations regarding the notice requirements have been issued. The Department of Labor expects the new deadline to be in the late summer or fall of 2013 and is considering providing model language.

Clarification of Lifetime and Annual Dollar Limit Rules for HRAs. Health Care Reform generally prohibits group health plans from imposing lifetime or annual dollar limits on the dollar value of “essential health benefits”. In earlier guidance, the Departments clarified that these lifetime and annual dollar limit rules do not apply to health flexible spending accounts or health savings accounts. That guidance also provided that the rules do not apply to HRAs that are “integrated” with other group health plan coverage that does not impose lifetime or annual dollar limits.

- **HRAs Integrated with Other Coverage.** The new guidance clarifies that an HRA will not be considered integrated with other coverage unless the HRA is available only to employees who are actually enrolled in the other coverage. In addition, an HRA cannot be integrated with an individual policy or with an employer plan that provides coverage through individual policies.
- **HRAs Not Integrated with Other Coverage.** The new guidance does not directly address how the lifetime and annual dollar limit rules apply to HRAs that are not integrated with other coverage, but it states

that the Departments plan to issue additional guidance on HRAs in the future. Until that guidance is issued, it is not clear whether employers may continue to offer stand-alone HRAs that cannot satisfy another exception to Health Care Reform (for example, the exception for retiree-only plans).

- **Spend-Down Features.** With some limitations, the new guidance allows the spending-down of unused amounts credited to an HRA before January 1, 2014 (whether or not the HRA is integrated). These unused amounts can be used after December 31, 2013, to reimburse medical expenses without causing the HRA to fail to comply with the lifetime and annual dollar limit rules. However, the new guidance does not directly address whether a spend-down feature is permissible for amounts credited to an integrated HRA on or after January 1, 2014. For example, may an employee who enrolls in a medical benefit option and receives an HRA contribution in 2014 use his or her unused HRA contributions after December 31, 2014, if the employee does not re-enroll in a medical benefit option?

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