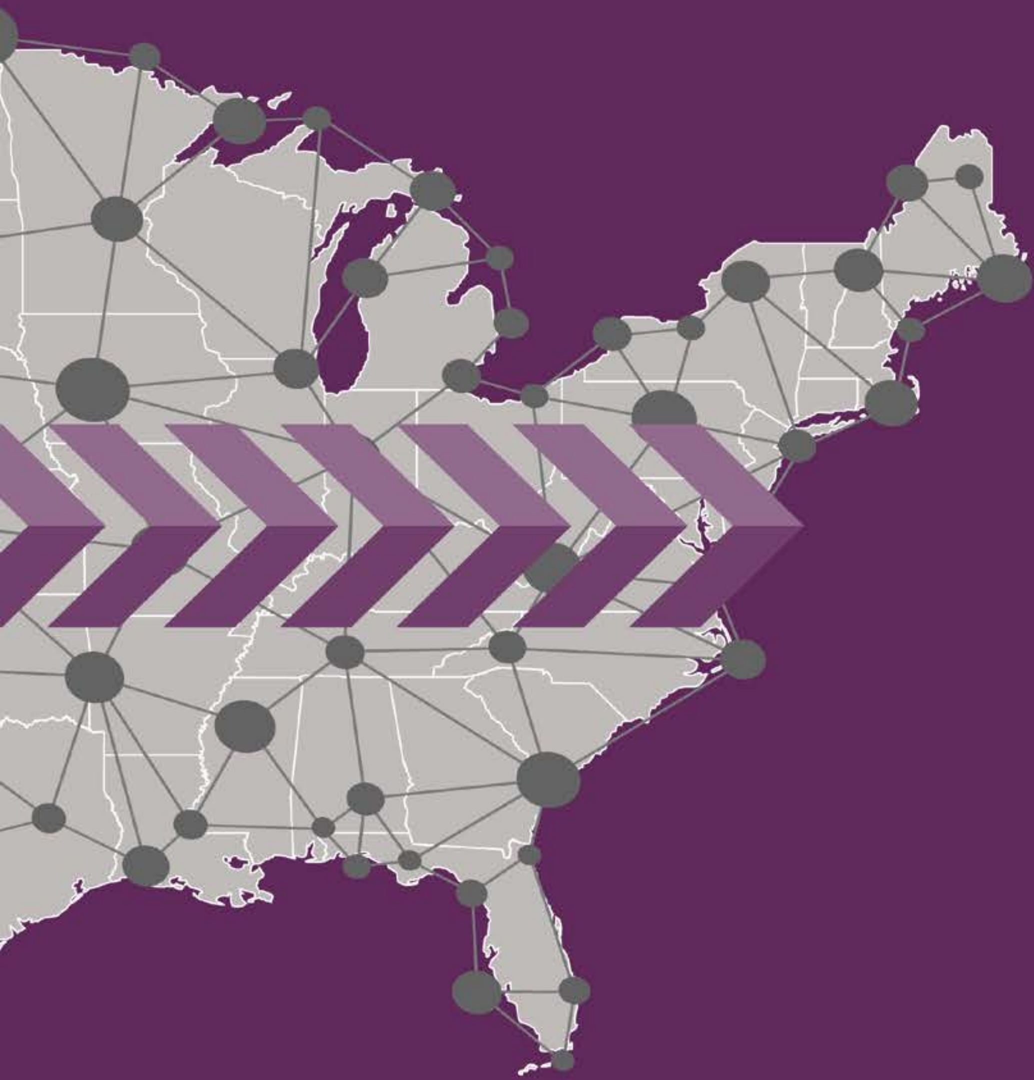

HRA Final Regulations: State Implications and Responses

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June 21, 2019

STATE Health & Value STRATEGIES

Driving Innovation Across States

A grantee of the Robert Wood Johnson Foundation

Welcome

All participant lines are muted. If at any time you would like to submit a question, please use the Q&A box at the bottom right of your screen.

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Questions? Email Heather Howard at heatherh@Princeton.edu.

Support for this webinar was provided by the Robert Wood Johnson Foundation.
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About Jason Levitis

Jason Levitis is principal at Levitis Strategies LLC, a healthcare consultancy focusing on the Affordable Care Act's tax provisions and state innovation waivers. He provides technical assistance to states in partnership with State Health and Value Strategies. He is also a nonresident fellow at the Brookings Institution and a senior fellow at Yale Law School's Solomon Center for Health Law and Policy. Until January 2017, he led ACA implementation at the U.S. Treasury Department.

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Objectives

- ✓ Review key elements of the proposed rule and significant changes in the final rule
- ✓ Discuss implications for state insurance markets, consumers, and Marketplaces
- ✓ Consider potential state responses

Background

- A health reimbursement arrangement (HRA) is a tax-preferred, account-based health benefit funded by employers to pay for a variety of health care expenses
- The ACA generally prohibits HRAs and similar arrangements because they violate the annual limit and preventive services rules
- Obama Administration guidance allowed a narrow exception: HRAs that are "integrated" with traditional employer coverage
- Result: Employers could not provide pre-tax dollars to help employees buy individual market coverage
- The October 12, 2017 Executive Order called for easing rules on HRAs, short-term plans, and association health plans
- On October 29, 2018, HHS, DOL, and Treasury/IRS (the Departments) issued proposed regulations loosening rules on HRAs
- On June 13, 2019, the Departments finalized the proposed regulations with a few changes

Review of the Proposed Rule

- Central provision: new "individual coverage HRA"
  - Worker must attest to purchasing individual market coverage
  - No cap on amount
  - Rules intended to prevent sending sicker workers to individual market
- Secondary provision: new "excepted benefit HRA"
  - May be used to purchase short-term but not individual market coverage
  - Capped at $1,800
- Conforming changes, including rules regarding:
  - Interaction between HRAs and premium tax credits (PTCs), employer mandate, non-discrimination rules, etc.
  - Special enrollment period (SEP) for new HRA recipients
- Effective January 1, 2020
- Requested comments on a wide range of issues

Key Features of Final Rule

- Mostly finalizes proposed rule with few changes
- Tweaks restrictions on sending sicker workers to individual market
- New cap on HRA age adjustments
- Retains 2020 effective date, offers tools intended to help address confusion
- Clarifies substantiation requirement and provides model attestation

Potential Implications for Individual Market

- Key market risks:
  - Large employers with sicker risk can shift whole workforce to individual market with HRA, while healthier firms continue to bear their own risk with traditional ESI
  - Employers may find ways to shift only sicker workers into individual market with HRA, keeping healthier in traditional ESI
  - Confusion, weak enforcement could lead healthier workers with HRAs to purchase short-term or other “gray market” plans
- Individual markets with better risk pools and premiums similar to group markets more likely to be significantly impacted
- Potential mitigating factors: PTC population, stickiness, perceptions of administrative cost, potential to draw healthier workers in firms that currently don’t offer coverage

Potential Implications for Consumers

- Higher premiums due to shifting sicker workers into individual market would affect unsubsidized
- Shifting from no offer to HRA could make lower-income workers ineligible for PTC, while providing substantial tax benefit to higher-income workers
- New 3:1 cap on HRA age adjustments means shifting from traditional ESI to HRA will generally benefit younger workers at the expense of older workers
- Potential for some impact from excepted benefit HRA

See also next slide re. potential for consumer confusion

Risk of Confusion, Especially for 2020

- Complex new rules may be challenging for consumers to understand
- Neither SBMs nor FFM will be prepared for new rules in upcoming open enrollment
- Key risks for employees and employers:
  - Incorrect advanced premium tax credit (APTC) determinations
  - Confusion about requirement to purchase coverage off-Marketplace
  - Confusion about requirement to purchase ACA-compliant coverage
- Beefed-up employee notice and expected tools to calculate APTC on own may mitigate the first issue to some extent

Potential State Responses

- Unlike short-term and association health plan regulations, no clear options to “opt out” of HRA rule
- Key role in educating employers, employees, brokers, and others about rules and risks
- Insurance regulation could require sufficient disclosures and limit deceptive marketing
- Potential use of state tax law

Informing Employers, Employees, and Other Stakeholders

- FAQs, explainers aimed at employer, brokers, benefit advisors
- FAQs, explainers, and additional model notices aimed at consumers offered HRA
- SBMs will incorporate rules and warnings to extent possible in limited time

Using Insurance Regulatory Authority

- Require brokers to provide disclosures to employers
- Require issuers, brokers, and web-brokers to provide disclosures to consumers
- Require brokers and issuers to acquire signed consumer attestations
- Reduce deceptive marketing by monitoring market conduct and complaints

Other Policy Options

- Decouple from federal tax exclusion for HRA
- Require additional substantiation and reporting of qualifying coverage for state tax purposes

Discussion

The slides and a recording of the webinar will be available at www.shvs.org after the webinar

Thank You

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