



21st Century Cures Act Would Give Small Employers Greater Use of HRAs

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21st Century Cures Act Would Give Small Employers Greater Use of HRAs

Passed swiftly by Congress, the 21st Century Cures Act ([H.R. 34](#)) seeks to hasten cures for killer diseases, among other things. President Obama is expected to sign the bill on Tuesday, December 13. One of those other things would seem to advance a goal of the GOP's plan for further healthcare reform, known as "[A Better Way](#)," which is to encourage the use of health reimbursement arrangements (HRAs). Whether this new HRA provision will survive President-elect Trump's "repeal and replace" plans remains to be seen. But for now, if signed into law, small employers would have a new tool for designing health plan options for their employees.

The Act creates "qualified small employer health reimbursement arrangement" under Internal Revenue Code Section 9831(d)(2), or, if you like acronyms, the "QSEHRA." For plan years beginning after December 31, 2016, "small employers" can adopt a QSEHRA for their employees. Here are some of the basic rules:

- "Small employers" means employers that (i) are not applicable large employers under Sec. 4980H(c)(2), which generally means that they do not have more than 50 full time employees, including full time equivalents, during the prior year, and (ii) do not offer a group health plan to any of their employees.
- The QSEHRA must be offered to all of the eligible employers' employees, except that employers may exclude employees: (i) who have not completed 90 days of service; (ii) under age 25; (iii) who are part-time or seasonal; (iv) not included in the arrangement but covered by a collective bargaining agreement, if accident and health

benefits were the subject of good faith bargaining; and (v) who are nonresident aliens without earned income from sources within the United States.

- The QSEHRA must be provided “on the same terms to all eligible employees of the eligible employer.” However, benefits under the QSEHRA could be varied based on the price of an insurance policy in the relevant individual health insurance market due to age and family size.
- The QSEHRA can be funded only by employer contributions, no salary deferrals are permitted.
- The QSEHRA provides for the payment or reimbursement of expenses for medical care (as defined in Sec. 213(d)) incurred by the eligible employee or the eligible employee’s family members.
- The maximum benefit under the QSEHRA for any year may not exceed \$4,950 (\$10,000 in the event the HRA also covers the employee’s family members).
- Employers must provide a notice to employees about the QSEHRA at least 90 days before the beginning of the year informing them (i) about the amount of the benefit under the QSEHRA, (ii) that they should let the health insurance exchange know of the benefit if they are applying for an advance of premium tax credits, and (iii) that if they do not have minimum essential coverage for any month, they may be subject to tax under section 5000A for such month and reimbursements under the QSEHRA may be includible in gross income.

Remember that the IRS had prohibited stand-alone HRAs. See Notices 2013-54 and 2015-17. However, the Act would save QSEHRAs from that IRS position by removing these arrangements from the definition of “group

health plans.” The Act also would amend the definition of group health plan in ERISA Sections 607 and 733 to exclude these arrangements, which includes an exclusion from the requirements under COBRA.

This comes a little late in the game for employers that have already made plans for 2017, but it is an option many small employers may want to consider.

