

# Benefits BRIEF



## Infertility HRAs: Compliance Considerations for an Emerging Trend

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In an effort to offer more robust and cost-effective infertility coverage to employees, the Infertility HRA is an increasingly popular solution for employers. Like a traditional HRA, benefits offered under an Infertility HRA are tax-free and employer-sponsors enjoy a considerable amount of flexibility in designing the arrangement. However, there are important compliance considerations for employers to keep in mind when implementing an Infertility HRA.

### Expense Reimbursement

An HRA can reimburse only medical care expenses as outlined in Internal Revenue Code Sec. 213(d). Further, to be a reimbursable expense, the plan itself must be designed to include coverage for that item or service. In the case of an Infertility HRA, the arrangement will typically limit eligible expenses to only those related to infertility care and services (as opposed to a general-purpose HRA that will reimburse any qualified medical expense).

As part of its benefits offering, an employer may wish to go beyond expenses related to infertility care to also include reimbursements of expenses related to surrogacy or adoption. These expenses, though, are not qualified medical expenses. Consequently, the employer must implement separate programs, such as an adoption assistance program, to provide reimbursement of these types of expenses. These expenses cannot be reimbursed with funding made available under the Infertility HRA.

### HRA Quick Facts

- **Eligible Employers:** Any employer, when integrated with group health plan
- **Waiting Period:** Cannot exceed 90 days
- **Funding:** Employer contributions only
- **Funding Amount:** Determined by employer
- **Ownership:** Employer owned
- **Carryover of Unused Funds:** Optional; determined by employer
- **Maximum Carryover Amount:** Determined by employer
- **Eligible Medical Expenses:** Only unreimbursed Code §§213(d) medical expenses incurred while enrolled; expenses allowed under plan are determined by employer
- **Code §105(h) Nondiscrimination Rules:** Applies; testing required annually

## ACA Market Reforms

The Affordable Care Act (ACA) includes a variety of market reform measures that apply to group health plans – including HRAs. Among these are the prohibition against annual and lifetime limits and the requirement to provide certain preventive services at no cost. By design, an HRA cannot satisfy these market reforms and must therefore be integrated with other group medical coverage.

To integrate an HRA, the employer-sponsor must offer group medical coverage other than the HRA, and the HRA can be offered only to those employees eligible for and enrolled in group medical coverage (coverage offered by either the employer or another employer). This means that an Infertility HRA cannot be offered on a standalone basis; rather, it must be offered along with group medical coverage and only to employees who are enrolled in that medical coverage or in medical coverage offered by another employer.

## Effect on HSA Eligibility

To be eligible to make and receive Health Savings Account (HSA) contributions, an individual must be covered under a high-deductible health plan (HDHP) and have no disqualifying other coverage. Coverage under an Infertility HRA is generally considered disqualifying coverage because it provides pre-deductible benefits. Employer-sponsors that wish to preserve the HSA eligibility of their employees may design the benefit as a post-deductible HRA.

A post-deductible HRA is one that requires participants to first satisfy the minimum statutory deductible (in 2022, \$1,400 for self-only coverage and \$2,800 for family) before expenses can be reimbursed. Only expenses that are covered by the HDHP will count towards satisfaction of the deductible, the administration of which may require coordination with the medical carrier.

## Application of Federal Benefits Laws

Just like traditional, general-purpose HRAs, Infertility HRAs are considered group health plans subject to both the Employee Retirement Income Security Act of 1974 (ERISA) and the Consolidated Omnibus Budget Reconciliation Act (COBRA). Under these federal laws, employer-sponsors must ensure that the benefit is appropriately documented in a Plan Document and Summary Plan Description (SPD), included in the annual 5500 filings (if applicable), administered according to ERISA's claims and appeals processes, and offered to qualified beneficiaries through the COBRA election process.

Additionally, the self-insured nature of an Infertility HRA invites heightened compliance obligations under the Health Insurance Portability and Accountability Act (HIPAA). Among other initiatives, employer-sponsors will need to adopt privacy, security, and breach

notification policies and procedures, and implement training for those in the employer's workforce who will or may have access to Protected Health Information (PHI).

Because of the administrative complexity of these federal laws, the assistance of a third-party administrator (TPA) or health insurance carrier can be a significant advantage – particularly with respect to claims administration. While the TPA need not be specialized in Infertility HRAs, those that are may offer value-add services, such as assistance with navigating infertility care and providers, special network access, and participant education.

## Additional Resources

[IRS Publication 502 \(2021\), Medical and Dental Expenses](#)

[IRS, Tax Topic No. 607, Adoption Credit and Adoption Assistance Programs](#)

[IRS Notice 2013-54, Application of Market Reform and other Provisions of the Affordable Care Act to HRAs, Health FSAs, and Certain other Employer Healthcare Arrangements](#)

[IRS Publication 969 \(2021\), Health Savings Accounts and Other Tax-Favored Health Plans](#)

[Rev. Proc. 2021-25, 2022 Inflation Adjusted Items](#)