



Health Reimbursement Arrangements (HRAs) & Individual Insurance Premium Reimbursement - November 2011

Senate Bill 11-019 was passed and then signed on March 29, 2011. The Senate vote was 35 in favor and zero opposed. The House passed with a vote of 63 in favor and 1 opposed. The bill became effective September 1, 2011.

Under the Bill Employers in Colorado can reimburse individual health insurance premiums with tax-free dollars using an HRA if the following three questions can be answered "yes."

These questions are:

- 1) is the employer offering a qualified Health Reimbursement Arrangement (HRA),
- 2) Has the employer not offered a group health insurance plan for the previous 12 months, and
- 3) Does the company employ fewer than 50 employees.

If the employer answers "yes" to these questions then they could choose to offer an HRA and reimburse individual health insurance premiums under the new state-approved rules.

This new provision requires the employer to sign an affidavit attesting to the truth of the answers if HRA funds are going to be used to pay all or a portion of any individual health insurance premiums. The HRA does not directly pay the carrier for the premium it always reimburses the premium to the HRA participant. Proof of coverage and proof of premium payment must be provided by the participant and the claim adjudicated prior to each reimbursement.

The question arises, if the employer does offer an HRA that allows for individual insurance reimbursement to be offered; is the employer potentially in conflict with ERISA and HIPAA regulations? State regulations may have no jurisdiction as self-funded plans are pre-empted under ERISA. This is definitely a factor to consider when looking at adding individual premium reimbursement to an HRA.

Colorado did clarify that HRA premium reimbursement can include Cover Colorado premiums, unless the HRA was set up for the purpose of denying group coverage to unhealthy individuals and wanting to force people onto Cover Colorado and out of the group plan. This is one reason the 12-month rule regarding prior group insurance was included in the bill. It is hoped that this new option will encourage insurance carriers to become more consumer-directed and not as employer-directed when looking at underwriting requirements on individual products.

If an employer wants to offer individual premium reimbursement under an HRA FlexMagic Consulting will write the plan document and provide the necessary materials and also can administer these plans. However, FlexMagic does ask the employer to sign a disclaimer explaining that they understand it is not clear under ERISA and HIPAA regulations how the payment of individual premiums using an HRA will ultimately be treated. The question becomes, "Is this an employer-sponsored plan not individual insurance as the employer is reimbursing individual premiums and offers no other group health plan?" We do not have a clear answer on this. For additional information, give us a call at 800-888-9084.