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PODCAST

Episode 1: The Alphabet Soup of Health Accounts

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Audio Transcript

Susan Nash: Welcome to Winston's Benefits Blast podcast. I'm Susan Nash and today I'm joined by Amy Gordon. During this episode, we will be presenting on the Alphabet Soup of Health Accounts.

Recent proposed regulations by the Departments of Labor, Treasury, and Health & Human Services have introduced two new types of health accounts and so Amy and I were thinking it would be a good time to go over the existing types of health accounts that we have today as well as these two new types of accounts.

I'll get started on an overview of what we've got under the proposed regulations and Amy is going to then follow up with some of the different types of accounts that we currently have.

Under these proposed regulations which were issued in late October, the IRS and Labor & Treasury Departments and HHS have basically backtracked on the guidance that we had under the Obama administration and have now said that health reimbursement accounts can be used in conjunction with individual insurance policies purchased on the market.

These individual coverage HRA's or ICHRA's as they're being called, are a new type of benefit that can be offered to employees. They have to be offered on the same terms and conditions to the same class of employees and you have to show that the individuals are enrolled in individual coverage in order to have access to these ICHRA's. They also can't be offered at the same time as traditional coverage to the same class of employees.

But they are a way that smaller employers and possibly sectors of the workforce such as part-time employees might be able to enjoy the benefits of an employer-funded account but also have individual insurance coverage. There are some issues with how these accounts interact with the premium tax credits on the healthcare marketplace exchanges and also how these affect an employers shared responsibility requirements and we do have some recent guidance from the IRS on those two points.

In addition under those proposed rules, the IRS also proposed along with Labor, Treasury, HHS that employers could now offer what's called an Expected Benefit Health Reimbursement Account. Those, which are being called ABHRA's, can be offered to employees that also have some other form of health insurance coverage and under those accounts they can reimburse any type of medical eFxpenses; there is a cap on the amount of the coverage which is $1,800.

These types of accounts will probably be offered to sectors of the workforce where an employer wants to allow for employees to use a little bit of extra money to pay for out-of-pocket expenses, deductibles; they can be used to pay for COBRA premiums, premiums for short-term limited duration insurance, or excepted benefit coverage but not for individual insurance market coverage.

So these are two new types of accounts. Amy, what are some of the other accounts that employers might be offering to their employees these days?

Amy Gordon: Thank you, Susan. There are Health Savings Accounts also known as HSA's, there are health Reimbursement Arrangements also known as HRA's, and then there are Health Flexible Spending Accounts also known as FSA's.

These three tend to get very confusing. Employers are continuously asking us different questions about these types of accounts and so we thought we would try to demystify what these accounts are and what they can do.

So, what they all have in common is that they can all reimburse eligible medical expenses. We refer to those as 213D, that is the actual code section health expenses; all on a tax-free basis. There is also a little bit more flexibility with an HSA. You can essentially buy anything with an HSA, the only problem is that if you buy non-medical expenses with it you actually have to pay a 20% penalty on that purchase.

There are a number of differences amongst the three accounts. For example, two out of the three actually have statutory limits on what you can contribute. So for example, for the 2019 limits in FSA, you can contribute up to $2,700 tax-free. For an HSA, self only, for 2019 you can contribute up to $3,500 and the family limit for an HSA for 2019 is $6,900.

An HRA, there are no limits, however, you are subject to non-discrimination testing so an employer can't, for example, fund an HRA on behalf of highly compensated employees and not non-highly compensated and still have the benefit as a tax-free benefit.

Susan Nash: And then under those proposed rules, ABHRA or the Excepted Benefit HRA would have an additional limit of $1,800 if those are finalized. What are some of the distinguishing features in terms of whether the employee owns the account or not? Could you talk about that a little bit?

Amy Gordon: Sure, so as far as ownership is concerned, when you are looking at an HSA, the employee owns that account. When you're looking at an FSA, it is essentially held in the employer's name but for the most part an employee can receive reimbursement of the total contribution amount on Day 1. If that employee leaves, they can't take an FSA with them but there are COBRA rights that trigger and so that they could continue to receive reimbursement. An HRA is held in the name of an employer and depending on what the terms of that plan are, an employer can forbid an employee from taking that with them if the employer so chooses.

So, Susan, what about COBRA? Tell us a little bit about COBRA and the three accounts.

Susan Nash: Yeah, it's interesting, the IRS has always held the position as well as the Department of Labor that an HRA, a Health Reimbursement Account is a group health plan for purposes of ERISA (Employee Retirement Income Security Act) as well as the Affordable Care Act and that's one of the problems that we've had with HRA's traditionally is whether they are also subject to the ACA market reform requirements such as the prohibition on having it cap on essential health benefits or whether they have to cover preventive care for first dollar coverage and that's why we have to get into the issue of whether they have to be integrated with either individual or group health insurance coverage. So it is a health plan and so the COBRA right would apply to those accounts. Same with a Health FSA, COBRA would apply to those although there is a special rule that in most cases you only have to offer

COBRA through the end of the year, in which the qualifying event occurs but for Health Saving Accounts those are not group health plans under ERISA and so you don't have to offer COBRA in connection with those accounts.

Amy Gordon: One of the complications that we typically see when an employee has a health savings account is that the employee cannot also have a general purpose health flexible spending account and/or a general purpose HRA alongside that health savings account without disqualifying themselves from making or receiving tax-free contributions to that HSA. Could you talk a little bit about how this interplays with wellness?

Susan Nash: Sure, I think one of the issues employers have, when they're offering this whole alphabet soup of accounts to employees, is making sure that one of the types of benefits they're offering doesn't disqualify the employee from participating in another benefit. So we often see employers that will offer a high deductible health plan/HSA benefit but also they might be offering Health Reimbursement Accounts or Flexible Spending Accounts. They might also have a wellness program or perhaps an onsite clinic and so to the extent that the person's participating in the high deductible health plan option with a Health Savings Account, they would have to be limited in terms of the other types of benefits that they could participate in or to the extent they had access to an on-site clinic or certain types of really robust wellness benefit programs, they might have to be charged a fair market value amount to access those services if they're still under their high deductible health plan deductible because under those rules the high deductible health plan can't reimburse for any other health coverage until the persons met their high deductible amount.

So we do work with a lot of employers looking at the full range of benefits being offered. I think this will be interesting if these proposed Regs (regulations) when they're finalized, I do think they'll be finalized, in terms of employers looking at now the two new types of accounts and how those might be used. They'll probably be used; you can't offer traditional health insurance and an ICHRA and you can't offer an ICHRA and an ABHRA at the same time so you'll have to look through your full range of options but make sure that they all interact with each other in a way that's legally compliant.

Amy Gordon: We always get questions from employers about the 'Use it or Lose it' rule and whether people can roll over and take with them their account balances and those rules have really loosened up over the past couple of years. Way back when, when you had an FSA, the only thing available was to actually exhaust your account by the end of the plan year but nowadays there are some other options that employers can do.

They can have a grace period that allows someone up to two and a half months past the end of the plan year for someone to exhaust their account balance. There's also a carry-over feature where you can allow employees to carry over up to $500 into the next plan year of unreimbursed expenses.

And then with respect to HSA's and HRA's, those are very flexible; there are no 'Use it or Lose it' rules; you actually can roll over the remaining account balances year after year.

Susan Nash: Well, you own the Health Savings Account so that is fully portable and non-forfeitable which is great. We also often times see what is called a pop-up HRA where it might only be used in connection with retiree medical benefits, in that case, it's only to be used after termination of employment. It might pop up based on years of service or length of service, there will be so much contributed to the account per year of service that pops up at the time of retirement and the individual can then go on to a private exchange or some other type of individual product and use the funds to pay for those. So those are very popular as well.

Amy Gordon: And then talking about retirement, you actually could forego reimbursing yourself under a Health Savings Account and essentially keeping those funds until retirement and using that to purchase qualified Medicare products and then reimbursing yourself also for unreimbursed medical expenses well into your retirement.

Susan Nash: And as you pointed out you could actually use it for any type of expense you just might have to pay income tax or an excise tax if you're below the age at which you're subject to that tax.

Well, I think we've covered the waterfront in terms of all the different types of accounts; I think it's a really exciting time to have all these options available to employers. I think the key takeaway for us today is that there are many options out there in terms of savings accounts.

You need to assess what you're offering and make sure that they all integrate together well but it is possible to offer certain types of accounts to certain populations such as part-time employees or retirees that you may not be offering to your actives and that's a way of getting benefits to groups that may not traditionally have been given benefits in the past.

Amy Gordon: Correct, and again, these three along with all the other proposed types of accounts, give an employer a lot of flexibility as to what they want to offer employees and retirees.

Speakers

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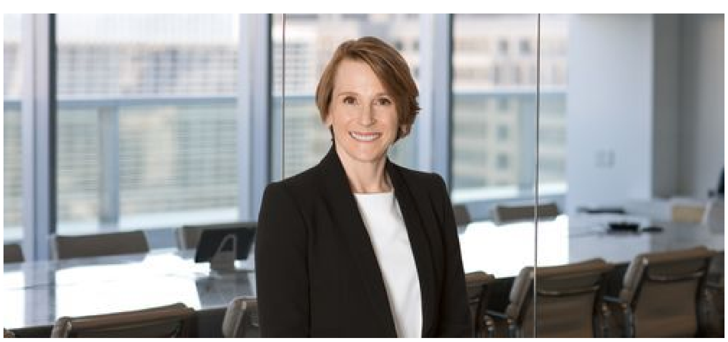

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