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Can the *21st Century Cures Act* Cure Benefit Costs for Small Employers?

Former President Barack Obama signed into law the 21st Century Cures Act, on December 13, 2016 which will let small businesses use health reimbursement arrangements (HRAs) to fund employees who purchase individual health plans on the open market. The Act became effective on December 31, 2016. Though this Act won't help most employers in 2017, it is certainly something to consider during an employer's next plan year design decision process.

Though the HRA funding option was not the primary focus of the Act, it does allow using HRAs to pay for non-group plan premiums and ensuring that a health plan's mental health care benefits are equivalent to its physical health care benefits.

The legislation allows small employers with fewer than 50 full-time employees or equivalents that don't sponsor a group health plan to fund employee HRAs to pay for qualified out-of-pocket medical expenses and for non-group plan health insurance premiums, including for plans purchased on public health care exchanges under the Affordable Care Act (ACA).

Many small employers have been frustrated by the Federal agencies' rules, including both IRS Notice 2013-54 and DOL Technical Release 2013-03, which prevents them from using "stand-alone HRAs" to reimburse employees who buy non-group health insurance coverage. Both agencies believed this funding mechanism violated the ACA and thus could result in subjecting an employer to a penalty if this arrangement were provided to employees.

The 21st Century Cures Act creates a new type of HRA—the Qualified Small Employer Health Reimbursement Arrangement (QSEHRA). The legislation specifies that:

- The maximum reimbursement for health expenses that small employers can provide through employee QSEHRAs is $4,950 for single coverage and $10,000 for family coverage, to be adjusted annually for inflation.

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- Small employers that choose to provide QSEHRAs must offer them to all full-time employees **except** those who have not yet completed 90 days of service, are under 25 years of age, or who are covered by a collective bargaining agreement for accident and health benefits. Part-time and seasonal workers may also be excluded.

- Generally, an employer must make the same QSEHRA contributions for all eligible employees. However, amounts may vary based on the price of an insurance policy in the relevant individual health insurance market, which in turn can be based on the age of the employee and eligible family members, or the number of family members covered.

As a reminder employers with 50 or more full-time employees or equivalent are still required to comply with the ACA mandate to provide affordable group health coverage to full-time workers, which excludes them from using HRAs to fund employees' purchase of non-group plans. Certainly the new administration has made a commitment to “repeal and replace” the ACA, it is still the law.