ICHRA - Frequently Asked Questions

General ICHRA Questions

What is an ICHRA?

ICHRA, or Individual Coverage Health Reimbursement Arrangement, allows employers to reimburse employees tax free for their individual health insurance. Each employee shops for the coverage that will work best for them.

In the age of personalized benefits and the consumerization of healthcare, ICHRAs—available as of January 2020—are a significant step toward reinventing health insurance as a customizable, 401(k)-style benefit.

How did ICHRA come to be?

In October 2017, President Trump issued an Executive Order (E.O. 13813) asking the Departments of the Treasury, Health and Human Services, and Labor to expand the usability of Health Reimbursement Arrangements (HRAs). The new rules creating the ICHRA were released in June 2019.

The ICHRA rules went into effect January 2020.

Why choose ICHRA over traditional group insurance?

ICHRA Administration puts cost control back in the employer's hands (the employer determines the amount of reimbursement to each employee) and gives employees the choice of health insurance coverage to the employee.

How does ICHRA work?

An ICHRA, or Individual Coverage Health Reimbursement Arrangement, allows employers to reimburse employees for health insurance premiums. The employer establishes the tax-free reimbursement allowances per employee. Employees shop for and select the insurance coverage that will work best for them. The insurance premiums are paid monthly by employee payroll deduction.

Under ICHRA, are premium reimbursements taxable income for the employee?

No. With ICHRA, all premium reimbursements are tax-free.

What happens if employees don’t use their allowance?

Because ICHRA is a reimbursable arrangement, and not an account, the employer simply keeps the dollars that were earmarked for reimbursement.

What is required from an employee to participate in ICHRA?

An employee must fall within one of the designated classes set forth by the employer, and the employee must have coverage under an individual health insurance policy. Additionally, employees must attest to the ICHRA administrator that they have individual coverage at the beginning of the plan year.

What happens if employees lose or drop their coverage in the middle of the year?

Employees who lose or drop coverage mid-year are no longer able to participate in ICHRA and receive premium reimbursements. They must wait until the next open enrollment period or experience a qualifying life event (QLE) such as a job loss, marriage, having a baby, or divorce to apply for coverage.

Designing an ICHRA

How much can employers contribute to an ICHRA?

There are no dollar limits on the annual contribution an employer can contribute to an employee’s ICHRA. Generally, all employees in the same class must receive the same level of annual contributions. Employers may increase ICHRA contribution amounts for older employees or employees with more dependents. However, the maximum dollar amount available to the oldest participant may not be more than three times the amount available to the youngest participant.

Are there minimum participation rates?

No, there are no minimum participation rates or class sizes for an employer offering an ICHRA if it is the only health benefit. This is a big difference over traditional group plans which typically require a minimum level of participation.

However, employee class size requirements apply to businesses that:

1. Want to offer both group health insurance and the ICHRA, AND
2. Want to use the following five employee classes to determine the ICHRA eligibility:
    a. Full-time status
    b. Part-time status

c. Salaried pay
d. Hourly pay
e. Geographic location

The minimum employee class size requirements vary by employer:

- 10 employees for employers with fewer than 100 employees
- 10 percent of the total number of employees for employers with between 100 and 200 employees
- 20 employees for employers with more than 200 employees

Class size for geographic location smaller than a state (i.e. rating area, county, zip code).

Can employees located in other states be offered an ICHRA?

Yes, employers can offer different benefit solutions to employees in different states (or rating areas). This could include different reimbursement amounts through ICHRA.

Note: If employees in one state are being offered an ICHRA and employees in another state are being offered a traditional group plan, minimum class size requirements may apply.

The minimum employee class size requirements vary by employer:

- 10 employees for employers with fewer than 100 employees
- 10 percent of the total number of employees for employers with between 100 and 200 employees
- 20 employees for employers with more than 200 employees

What are "employee classes" and how do they work?

Employers can structure eligibility requirements for the ICHRA using up to 11 employee classes.

The ICHRA classes are as follows:

- Full-time employees
- Part-time employees
- Seasonal employees
- Employees covered under a collective bargaining agreement
- Employees in a waiting period
- Foreign employees who work abroad
- Employees working in the same geographic location (same insurance rating area, state, or multi-state region)
- Salaried workers
- Non-Salaried workers (such as hourly workers)

- Temporary employees of staffing firms
- A combination of two or more of the above

Employers can vary allowance amounts by age, but can only offer the oldest employees in the class an amount up to three times higher than the allowances offered to the youngest employees in the class.

Employers can also vary employee amounts by family size. For example, they could offer $500 to full-time employees who are single and $800 to full-time employees who have a family.

Beyond this, businesses must offer the same allowance to each employee in the same class.

Can an employer offer a group plan to full-time employees and an ICHRA for part-time employees?

Yes. When initially setting up the ICHRA, an employer will need to create separate classes for both part-time and full-time employees and then set the reimbursable limits.

If employers choose to offer both the ICHRA and group health insurance based on full-time or part-time status, salaried or hourly payment structure, or geographic location, they must ensure their employee classes are of a certain size.

The minimum employee class size requirements vary by employer:

- 10 employees for employers with fewer than 100 employees
- 10 percent of the total number of employees for employers with between 100 and 200 employees
- 20 employees for employers with more than 200 employees

Employer Requirements

Does an employer have to fund an ICHRA or do they put money in as needed?

ICHRA is a reimbursement arrangement rather than an account. Employers are allowed to reimburse employees for their individual health insurance. Because the money contributed by the employer does not count as income, there are no tax implications. While some employers may choose to setup separate bank accounts for tracking purposes, it is not required.

Can applicable large employers (ALEs - at least 50 full-time equivalent employees in the prior year) offer an ICHRA to meet the Employer Mandate under the ACA?

Yes, under the following circumstances:

1. The ALE must offer an ICHRA to at least 95% of its full-time employees (and their dependents).

2. The offer of ICHRA must be affordable and provide minimum value, as defined under the ACA.
3. Safe harbors for qualifying as an “affordable” ICHRA include:
   - Employee location: Allowing ALEs to base ICHRA rates on their primary business location instead of every employee's actual address.
   - Calendar year and non-calendar years: Provisions for ICHRA plan years that are different from individual insurance plan year.
   - Affordability: Allowing ALEs to estimate an employee's Household wages using one of three different methods: Form W-2 Wages, Rate of Pay, or Federal Poverty Line.
   - Another safe harbor based on employee ages was also discussed but not yet provided. The IRS is asking for comments on how this might be practically implemented.

How much must an employer contribute to meet the Minimum Value (MV) requirements and avoid corporate mandate penalties?

IRS Notice 2018-88 provides some guidance into how this might work.

In general, the ICHRA contributions made by an employer must be high enough that an employee could purchase the lowest cost silver plan in his or her market and not pay more than 9.83% (rate for 2021) of his or her income out-of-pocket.

Can ICHRAs be used for businesses structured as Sole Proprietorships, C-Corps, S-Corps, Non-Profits, and LLCs?

It depends. In order for a business owner to be eligible to participate in an ICHRA, they must be considered an employee of the business.

Sole Proprietorship – Sole proprietors cannot make pre-tax contributions into their own ICHRA account. If the sole proprietorship has employees, then they can implement a Section 125 plan (a written plan that offers employees a choice between receiving their compensation in cash or as part of an employee benefit) and allow for employee contributions on a pre-tax basis but the sole proprietor would not be allowed to participate in the plan on a pre-tax basis.

C-Corp – A Section 125 plan is required to fund pre-tax benefits, including ICHRAs. All employees of the c-corp (shareholder or not) can participate in the plan.

S-Corp – Any owner who owns >2% is ineligible to receive pre-tax contributions. Anyone in this designation is considered an “owner” from an IRS perspective and, as such, must receive contributions on a post-tax basis.

Nonprofits – Nonprofits can provide ICHRAs to employees.

Partnerships – Partnerships, including LLCs and LLPs, must be taxed as a corporation to make pre-tax contributions. If the partnership is not taxed as a corporation and it has employees, then it can implement a Section 125 plan and allow for employee contributions on a pre-tax basis but the owners of the partnership would not be allowed to participate in the plan (on a pre-tax basis).

Employee Coverage Requirements

Can ICHRA be used to reimburse employees on Medicare?

Yes, Medicare can be reimbursed through ICHRA. Employees must have Part A and Part B together or Part C to qualify for participation. ICHRA may be used to reimburse premiums for Medica and Medicare supplemental health insurance for qualified employees and their dependents.

If an employee declines participation in a spouse's group plan, do they qualify for the ICHRA?

Yes, so long as the employee is not on his or her spouse's plan and has an individual health insurance plan.

If an employee already has an individual plan, do they qualify for the ICHRA?

Yes, so long as the employee falls within one of the designated classes set forth by the employer, and the employee has an ICHRA-compliant individual insurance plan.

Affordability and Tax Credits

In terms of the Premium Tax Credits (PTC), how is "affordable" and "unaffordable" determined?

In general, ICHRA is deemed affordable if the contributions made by an employer are high enough that an employee could purchase the lowest cost silver plan in his or her market and not pay more than 9.83% (rate for 2021) of his or her income out-of-pocket.

Example: Derrick, an employee at Big Build Construction, has a household income of $45,000. His employer is offering an ICHRA. The lowest-cost silver plan in his area is $550. The calculation for affordability in this case is:

*$45,000 * .0983 = $4,401*

$4,401 / 12 = $366.75

$550 - $366.75 = $183.22

In this scenario, the lowest allowance that can be considered affordable to the employee is $183.22.

Can Employees participate and receive Premium Tax Credits (PTC)?

If the ICHRA offering is deemed “affordable”, then the employee cannot accept a premium tax credit. If ICHRA is deemed “unaffordable” the employee can choose to decline the ICHRA and accept the premium tax credit.

How is the ACA subsidy (Premium Tax Credits) calculated (Answer from Matt at EY)?

The ACA subsidy is calculated based on the following 3 items:

1. Number of people in the household – which includes the individual, spouse if married, plus everyone claimed as a tax dependent
    a. This number can be found using the completed rows (name, SSN) for the individual and spouse information at the top of the form as well as the completed rows in the dependent section
2. State of residence – because Alaska and Hawaii have different Federal Poverty Limits than the 48 contiguous state and the District of Columbia
    a. This can be found in the “State” box at the top of the form
3. Modified adjusted gross income (MAGI)
    a. MAGI is equal to the adjusted gross income from the Form 1040 plus 1) tax-exempt foreign income, 2) tax-exempt social security benefits, and 3) tax-exempt interest
    b. Adjusted gross income can found in row 11 of Form 1040, but it will be missing those other tax-exempt incomes that are to be included
    c. Also note that the subsidy is based on the income estimate for the year that the individual wants coverage, so using the prior year Form 1040 is a good for an estimate, it should be caveated that the actual subsidy is based off of the MAGI of the year in which coverage was obtained

What happens if I receive an ACA subsidy overpayment?

The Affordable Care Act subsidy is determined by your best guess of your coming year’s annual income.

You can make an educated guess using last year's income, but there is no way to truly enter the correct amount in advance. There is no added penalty for taking extra subsidies. The difference will be reflected in your tax payment or refund.

The IRS will reconcile subsidies – for better or worse – using Form 8962, "Advance Payments of the Premium Tax Credit". You'll submit this with your taxes if you or someone in your tax family received any subsidies.

2021 American Rescue Plan

The 2021 American Rescue Plan has temporarily altered the structure of how subsidies are calculated to strengthen the ACA and improve access and affordability. However, the way subsidies are calculated will only be in place for two years before rolling back to pre-2021 guidelines. While short-term, the new subsidy expansion is more generous.

- ACA subsidies will be extended to higher-income individuals and families who do not currently qualify for a subsidy in 2021 and 2022.
- ACA subsidies for lower-income people who already qualify for 2021 and 2022 with be increased for more premium savings.
- ACA subsidies for individuals that receive unemployment benefits in 2021 could make monthly premiums $10 or less (even free).
- Taxpayers who misestimated their income in 2020 will not have to repay excess premium tax credits at tax time. This is for one-year only.

In the future, subsidy corrections will get trickier when ACA subsidy rules fall back to the income-level-based structure. This is when the IRS clawback could become a future issue.