

Individual Coverage Health Reimbursement Arrangement (ICHRA)

FAQ

1. What is an Individual Coverage Health Reimbursement Arrangement (ICHRA)?

An ICHRA allows employers to provide tax-free reimbursements to employees for insurance coverage they obtain on their own in the individual major medical market or through Medicare. Out-of-pocket medical expenses may also be reimbursed.

2. When can employers begin offering ICHRAs?

ICHRAs may be offered for plan years beginning on or after January 1, 2020.

3. What type of coverage must an employee have to be eligible for reimbursements through an ICHRA?

Employees (and any covered dependents) must have individual major medical coverage or Medicare, which includes grandfathered individual plans, grandmothered individual plans, individual plans sold on and off the Exchange, insured student health plans, coverage through Medicare Parts A, B, C, or D and Medicare Supplement health plans.

Employees with short-term medical plans, coverage through another employer's group health plan or coverage through a health care sharing ministry are not eligible for reimbursements through an ICHRA.

4. What is the maximum reimbursement amount an employer can provide with an ICHRA?

Employers determine the maximum reimbursement limits; however, the ICHRA must be offered under the same terms to all eligible employees. Reimbursement limits may only vary based on the age and/or family size of employees. If using age-based variations, the maximum reimbursement limit cannot exceed the 3:1 ratio allowed for individual market premium differences. Employers may also optionally permit carryover of unused funds to the following plan year.

5. What reimbursement limit should apply to an employee who gains coverage to an ICHRA midyear, such as a new hire?

The employer may determine if the full annual reimbursement is to be made available or if a pro-rated amount is to be made available, but whatever option the employer selects, it should be applied consistently.

6. Can an employer offer its employees a choice between a traditional group health plan and an ICHRA?

No. Employers cannot offer employees a choice between a traditional group health plan and an ICHRA; however, employers can offer one class of employees a traditional group health plan and another class of employees an ICHRA.

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7. What classifications are permissible if an employer wants to offer one class a traditional group health plan and the other class an ICHRA?

- ✓ Full-time employees
- ✓ Part-time employees
- ✓ Employees working in the same geographic location (generally, the same insurance rating area, state, or multi-state region)
- ✓ Seasonal employees
- ✓ Employees in a unit of employees covered by a collective bargaining agreement
- ✓ Employees who have not satisfied a waiting period
- ✓ Non-resident aliens with no U.S.-based income
- ✓ Salaried workers
- ✓ Non-salaried workers (such as hourly workers)
- ✓ Temporary employees of staffing firms
- ✓ Any group of employees formed by combining two or more of these classes

8. Are there any other rules pertaining to employee classifications?

Yes. A minimum class size rule applies to the ICHRA if an employer offers a traditional group health plan to some employees and an ICHRA to other employees based on:

- ✓ Full-time versus part-time status,
- ✓ Salaried versus non-salaried status; or
- ✓ Geographic location if the location is smaller than a state.

The minimum class size is:

- ✓ 10 employees for an employer with fewer than 100 employees,
- ✓ 10% (rounded down) of the total number of employees for an employer with 100 to 200 employees; and
- ✓ 20 employees for an employer with more than 200 employees.

The class size is determined by the number of employees who are offered access to the ICHRA. Class size is also determined at the common law employer size (not the controlled group size). Changes to definitions of classes during the plan year are prohibited. Also, through a new hire rule, employers can offer new employees an ICHRA, while grandfathering existing employees into a traditional group health plan.

9. Will coverage through an ICHRA impact an employee's ability to receive subsidies through an Exchange or Marketplace?

Yes. Employees who are covered by an ICHRA cannot receive subsidies through an Exchange or Marketplace plan. If, however, the employee waives coverage under the ICHRA, he/she may still be eligible for subsidies to the extent the ICHRA does not provide the employee with access to affordable coverage as defined by the Affordable Care Act (ACA).

Individual Coverage Health Reimbursement Arrangement (ICHRA)

10. How can an employer who is subject to the Employer Mandate offer an ICHRA and avoid penalties?

The ICHRA is considered minimum essential coverage and offering an ICHRA to at least 95% of full-time employees will meet the offer requirements of the Employer Mandate.

Coverage will be considered affordable to an employee if the lowest-priced Silver plan available on the Exchange or Marketplace is no more than 9.5% (adjusted for inflation) of the employee's household income after considering the ICHRA. Employers are permitted to use the lowest-priced Silver plan based on the employee's work location rather than their residential address when determining if coverage is affordable. Additionally, because the affordability of coverage is being tied to a Silver plan, an offer of coverage with minimum value will have deemed to have been made.

The Internal Revenue Service (IRS) has expressed that more guidance may be issued to address the interaction between the Employer Mandate and ICHRA's.

11. Are there any written notices that need to be provided to employees?

Yes. A written notice must be provided to employees which includes general information about the ICHRA, including the reimbursement limits and potential impact to eligibility for subsidies on the Exchange or Marketplace. The Department of Labor (DOL) has provided a model notice which employers can use. It generally must be provided 90 days prior to the start of a plan year or by the first day of coverage for new hires. However, for the first plan year, it can be provided to all employees by the first day of the plan year.

12. How will employers know if employees and family members have individual major medical coverage or Medicare?

Employers must have employees and covered family members attest each year to having individual major medical coverage or Medicare. The DOL has provided a model attestation form that can be used. Additionally, with every request for reimbursement, an attestation must be obtained which confirms that individual major medical coverage or Medicare coverage is still in place.

13. If the ICHRA does not cover the entire premium for an employee, can the employee pay for their portion of premium pre-tax through a Cafeteria Plan?

It depends. On-Exchange plans may not be paid pre-tax through a Cafeteria Plan; however, off-Exchange plans and Medicare plans can be paid pre-tax through a Cafeteria Plan.

14. Does the establishment of an ICHRA with a non-calendar plan year create a special enrollment period in the individual major medical market?

Yes. A special enrollment period will apply in the individual major medical market. It starts 60 days before the effective date of the ICHRA and ends 60 days after the effective date. Additionally, a special enrollment period will apply at each renewal for employees eligible to participate in the ICHRA.

Individual Coverage Health Reimbursement Arrangement (ICHRA)

15. Is the ICHRA subject to ERISA?

Yes, unless the ICHRA is offered by a church or government agency who is exempt from ERISA. The individual major medical plans and Medicare plans won't be subject to ERISA provided:

- ✓ Enrollment in these plans is voluntary; and
- ✓ The employer does not endorse any plan or carrier; and
- ✓ The employer receives no consideration for enrollments; and
- ✓ Employees receive written notice each year that the plans are not subject to ERISA.

16. Is the ICHRA subject to COBRA?

Yes. The ICHRA is subject to COBRA, but the individual major medical plans and Medicare coverage obtained by employees are not subject to COBRA. However, COBRA does not apply if an employee loses their individual major medical coverage or Medicare coverage during the year (for example, due to non-premium payment). Former employees who continue coverage under the ICHRA by virtue of COBRA must continue to be covered by an individual major medical plan or Medicare plan.

17. Does the employer have to provide employees with a Summary of Benefits and Coverage (SBC) for the ICHRA?

Yes. SBCs are required to be distributed at the appropriate times when an employer offers an ICHRA.

18. Can an employer offer a Flexible Spending Account (FSA) and the ICHRA to the same class of employees?

Yes. Employees can enroll in an FSA and ICHRA.

19. Will enrollment in an ICHRA eliminate eligibility to participate in a Health Savings Account (HSA)?

ICHRA that reimburse out-of-pocket medical expenses will eliminate HSA eligibility. ICHRA that limit reimbursements to insurance premiums will preserve HSA eligibility. Employers may offer the same class of employees the choice between an ICHRA that only reimburses premiums and an ICHRA that reimburses premiums and out-of-pocket medical expenses, and this will not violate the same terms requirement as referenced in Q&A #4.

20. Can an employer offer ancillary plans such as dental or vision plans in addition to the ICHRA?

Yes. Ancillary plans can be offered in addition to the ICHRA. The only restriction is that a traditional group health plan and an ICHRA cannot be offered to the same class of employees.

Individual Coverage Health Reimbursement Arrangement (ICHRA)

21. What is the difference between a Qualified Small Employer Health Reimbursement Arrangement (QSEHRA) and an ICHRA?

The table below outlines some key differences between QSEHRAs and ICHRAs:

	ICHRA	QSEHRA
Eligible Employers	Employers of any size may offer an ICHRA.	Employers with fewer than 50 full-time equivalent employees may offer a QSEHRA.
Maximum Reimbursement Limits	Maximum reimbursement limits are determined by the employer.	\$5,150 for single coverage and \$10,450 for family coverage (based on 2019 limits).
Eligible Employees	Eligible employees must have individual major medical coverage or Medicare.	Eligible employees must have minimum essential coverage.
COBRA	ICHRAs are subject to COBRA for employers with 20 or more employees.	QSEHRAs are not subject to COBRA.
Rights to Waive Coverage	Employees may waive coverage under an ICHRA.	Employees may not waive coverage under a QSEHRA.
Former Employees	Former employees may participate in an ICHRA assuming they continue to have individual major medical coverage or Medicare.	Former employees may not participate in the QSEHRA.

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22. How do Medicare Secondary Payer (MSP) rules apply to ICHRAs?

Nothing in the final rules changes the application of the MSP provisions. The Department of Health and Human Services (HHS) intends to issue further guidance clarifying the primary versus secondary payer responsibility of ICHRAs for employers subject to the MSP provisions.

23. Are there any new reporting requirements for ICHRAs?

There are no new reporting requirements that were created for ICHRAs; however, the rules do not change any reporting requirements that apply today for group health plans, and an ICHRA is considered to be a group health plan. This may include reporting requirements under the ACA, ERISA, the Code and/or the SSA.