

INDIVIDUAL COVERAGE HEALTH REIMBURSEMENT ARRANGEMENT September 2019

Note: FCMM is providing this summary and sample policy/checklist for churches that are considering establishing an individual coverage health reimbursement arrangement (ICHRA) for reimbursing employees' individual health insurance premiums. FCMM recommends consulting a benefits professional or legal advisor before implementing an ICHRA. A church should also consider using a third-party administrator if the ICHRA reimburses medical expenses other than individual health insurance premiums.

What is an ICHRA? Beginning on or after January 1, 2020 employers can offer an individual coverage health reimbursement arrangement (ICHRA) as an alternative to traditional group health plan coverage, subject to certain conditions. ICHRAs are individual account-based health plans funded solely by employer contributions that can reimburse employees for the cost of individual health insurance coverage and other eligible medical expenses on a pre-tax basis. Employers are not allowed to pay an insurance company directly for an employee's health insurance premiums.

ICHRAs must meet five requirements:

1. Enrollment – ICHRA participants must be enrolled in individual health insurance or Medicare.
2. Classes – If desired, employers can divide employees into classes (the allowable classes are listed in the regulations and on the following page of this summary), and can choose to offer an ICHRA to one or several classes of employees. ICHRAs must be offered on the same terms and conditions to all employees within a class.
3. Opt-out notice – an opt-out notice is required to be given to participants annually.
4. Substantiation of individual health insurance or Medicare coverage is required at the time of enrollment and at the time of each reimbursement.
5. Annual Notice – the employer must provide an ICHRA notice annually, at least 90 days before the start of each plan year. The plan year can be any 12-month period, but FCMM recommends using the calendar year as the plan year. If an ICHRA is established on a date other than January 1, the first plan year will be a short plan year.

How much can an employer contribute to an ICHRA for each employee? There is no minimum or maximum contribution required each year. Employers can contribute any amount they wish to each employee's ICHRA. Employers must offer the ICHRA on the same terms to all employees in a class of employees, except that employers can increase the amount available under an ICHRA based on the employee's age (the maximum amount available to the oldest class participant cannot be more than three times more than the maximum amount available to the youngest class participant) or number of dependents. The employer can set up the ICHRA so that unused individual amounts roll over and are available to be used by the individual in subsequent years, or can set up the ICHRA to cover only actual expenses up to the annual maximum contribution each year. To simplify administration, FCMM recommends not allowing unused amounts to roll to a subsequent year.

What expenses can an ICHRA reimburse? An ICHRA can reimburse employees for any Internal Revenue Code section 213(d) medical expenses that have not been otherwise reimbursed or submitted for reimbursement through another plan. An ICHRA can reimburse employees for their (and their eligible dependents') medical expenses up to the maximum dollar amount that the employer makes available each year. Employers can choose to limit what medical expenses are reimbursed. Expenses must be incurred while the individual was covered by the ICHRA.

If medical expenses other than individual health insurance premiums are reimbursed, the employer must comply with all applicable HIPAA rules and regulations regarding the use and disclosure of protected health information. FCMM recommends using the ICHRA only for reimbursement of individual health insurance or Medicare premiums unless the church utilizes a third party administrator.

ICHRA can be used to reimburse premiums for individual health insurance chosen by the employee (purchased through the exchange/marketplace or directly from an insurance company) on a pre-tax basis. Any portion of an individual health insurance premium for coverage purchased directly from an insurance company and not covered by the employee's ICHRA can also be paid on a pre-tax basis by the employee using a salary reduction arrangement under the employer's cafeteria plan, if the employer has a cafeteria plan and permits this as a reimbursable expense.

ICHRA can be used to pay for coverage under Medicare Parts A, B, C, D, and for Medicare supplement plans.

In order to participate in an ICHRA, what type of individual health insurance coverage must employees have? Employees must be enrolled in individual health insurance (or Medicare) for each month the employee (or the employee's eligible dependent) is covered by the ICHRA. The employee must substantiate and verify such coverage to the employer upon enrolling in the ICHRA and at the time of each reimbursement. The individual health insurance coverage can be purchased through the exchange/marketplace or directly from an insurance company. It cannot consist of: (1) short-term, limited-duration insurance, (2) coverage consisting only of dental, vision or similar "excepted benefits" or (3) coverage provided under a health care sharing ministry.

Must an employer offer the ICHRA to all employees? An employer must offer the ICHRA on the same basis to all individuals within a class of employees, except that the amounts offered may be increased for older employees or employees with more dependents. An ICHRA cannot be offered to any employee to whom the employer offers a traditional group health plan. However, an employer can decide to offer an ICHRA to certain classes of employees, and offer a traditional group health plan (or no health coverage) to other classes of employees. Specific classes can also be combined together. Employers may make distinctions based only on the following classes:

- 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 particular collective bargaining agreement
- Employees who have not satisfied a waiting period
- Non-resident aliens with no U.S. source income
- Salaried workers
- Non-salaried workers (such as hourly workers)
- Temporary employees of staffing firms
- Any group of employees formed by combining to or more of the above classes

Can an employer offer a traditional group health plan to some employees and an ICHRA to other employees? Yes, as long as the groups of employees that are offered an ICHRA satisfy the class

requirement described above. In addition, an employer offering traditional group health coverage to some classes of employees and an ICHRA to other employees based on full-time vs part-time status, salaried vs non-salaried status, or geographic location (if the location is smaller than a state), must comply with class size requirement rules. For an employer with fewer than 100 employees, the minimum class size is 10 employees. For an employer with 100-200 employees, the minimum class size is 10% of the total number of employees, and for an employer with more than 200 employees, the minimum class size is 20 employees.

What are the notice requirements? ICHRAs must provide a notice to eligible participants regarding the ICHRA and its interaction with the Affordable Care Act premium tax credit. The notice must be provided 90 days before the beginning of the ICHRA plan year and annually thereafter. The Agencies issued a model notice that can be used for this purpose. To locate the model notice, search on “individual coverage HRA model notice” in your web browser and click on the .pdf document from the Department of Labor or follow the link below.¹

Employers who want to offer an ICHRA effective as of January 1, 2020 must provide the required notice no later than October 2, 2019. Employees who want to take advantage of an ICHRA with a start date of January 1, 2020 must enroll in individual health insurance during the open enrollment period at the end of 2019, unless they have Medicare.

What are the substantiation requirements? The ICHRA must have reasonable procedures to annually substantiate that participating employees and their families are enrolled in individual health insurance or Medicare while covered by the ICHRA. Substantiation is also required with each reimbursement request. The Agencies issued a model attestation form that can be used for this purpose. To locate the model attestation form, search on “individual coverage HRA model attestation” in your web browser and click on the .pdf document from the Department of Labor or follow the link below.²

If an ICHRA reimburses eligible medical expenses (in addition to individual health insurance premiums), substantiation of the eligible medical expense and compliance with HIPAA privacy and security rules is also required. Because of this added complexity, FCMM recommends that ICHRAs which reimburse eligible medical expenses other than individual insurance premiums consider using a third-party administrator to administer the ICHRA.

What are the opt-out requirements? Because employees participating in an ICHRA are not eligible for Affordable Care Act premium tax credits, employees must be permitted to opt out of an ICHRA at least

¹ Web link for Model Notice: <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/rules-and-regulations/completed-rulemaking/1210-AB87/individual-coverage-model-notice.pdf>

² Web link for Model Attestation: <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/rules-and-regulations/completed-rulemaking/1210-AB87/individual-coverage-model-attestation.pdf>

annually. They may claim the premium tax credit if they are otherwise eligible and if the ICHRA is considered unaffordable.

Is the employer responsible for the individual health coverage chosen by the employee? The employer generally has no responsibility with respect to the individual health insurance that is purchased by the employee, as long as the employee's purchase of individual health insurance is completely voluntary, the employer does not select or endorse any particular insurance carrier or insurance coverage, and the employer does not receive any cash, gifts, or other consideration in connection with an employee's selection or renewal of any individual health insurance.

How does an employer offering an ICHRA treat new hires? If an employer offers an ICHRA to all of its employees, new employees should be permitted to enroll once eligible. An employer that offers an ICHRA to a class of employees can allow a new hire in that class to participate in the ICHRA upon hire. The employer may choose to contribute the entire amount contributed to other similarly situated employees, or contribute based on a reasonable pro-ration of the annual amount contributed.

Employers are also allowed to offer new hires an ICHRA, while grandfathering existing employees in a traditional group health plan.

If the employer is an applicable large employer for purposes of the Affordable Care Act (employs 50 or more full-time equivalent employees), will offering an ICHRA satisfy the employer mandate? Although an offer of an ICHRA counts as an offer of coverage under the employer mandate provisions of the Affordable Care Act, whether an applicable large employer would owe a payment under the employer mandate depends on whether the ICHRA is "affordable" under Affordable Care Act rules and is based in part on the amount the employer makes available under the ICHRA. The IRS should be providing additional information on how the employer mandate applies to ICHRAs soon.

ICHRAs and Health Savings Accounts ("HSAs"). An ICHRA cannot be offered in conjunction with a high-deductible health plan and HSA unless the ICHRA reimburses only insurance premiums and eligible medical expenses beyond the health plan's deductible limit. Integration with HSAs is not discussed further in this summary.

ICHRAS and HIPAA. If the employer allows the ICHRA to reimburse eligible medical expenses in addition to individual health insurance coverage premiums, it is likely the employer will have access to protected health information when substantiating reimbursement claims. If the employer has access to protected health information it must comply with all applicable HIPAA rules.

ICHRAS and continuation coverage. Federal law does not require church health plans to provide continuation coverage after termination of employment. However, the employer may be required to provide ICHRA continuation coverage under applicable state law.

INDIVIDUAL COVERAGE HEALTH REIMBURSEMENT ARRANGEMENT SAMPLE POLICY/CHECKLIST

ICHRA EFFECTIVE DATE: _____

PLAN YEAR: January 1 – December 31 (the first plan year can be a short plan year, beginning at any time during the year)

NOTICE

Notice must be given to eligible participants 90 days before the beginning of the ICHRA plan year and annually thereafter.

ELIGIBILITY

- All employees are eligible to participate in the ICHRA, upon substantiation of individual health insurance or Medicare coverage, or

- If the ICHRA is not being offered to all employees, select the following classes of employees eligible to participate in the ICHRA (all employees must substantiate they have individual health insurance coverage or Medicare) Note: The ICHRA contribution amount must be the same for each class of employees – other than variations based on age or family size.
 - 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 particular collective bargaining agreement
 - Employees who have not satisfied a waiting period (Describe waiting period: _____)
 - Non-resident aliens with no U.S. source 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 the above classes (explain):

**If the employer offers traditional group health coverage to some employees, and an ICHRA to other classes of employees asterisked above, minimum class size requirements apply. For employers with fewer than 100 employees, the minimum class size is 10 employees. For employers with 100-200 employees, the minimum class size is 10% of the total number of employees. For employers with more than 200 employees, the minimum class size is 20 employees.*

AMOUNT OF EMPLOYER CONTRIBUTION

- Up to a maximum of \$ _____ per employee per year. An employee will only be reimbursed for the actual cost of individual health insurance or Medicare premiums. The difference between the maximum amount and the amount reimbursed will not be available for use in a subsequent plan year. Describe when contributions will be available for reimbursement (i.e., monthly, quarterly, at the beginning of each plan year, at the end of each plan year): _____

- If classes of employees are elected above, describe the contribution amount for each class:

- If contributions will vary depending on the age of the employee, describe the contribution amount for each age group (Note: the maximum amount available to the oldest class participant cannot be more than three times more than the maximum amount available to the youngest class participant):

- If contributions will vary depending on the number of dependents of an employee, describe the contribution amount for each different group (i.e., single, single +1, family): _____

MEDICAL EXPENSES ALLOWED TO BE REIMBURSED FROM THE ICHRA

- Only individual health insurance or Medicare premiums will be reimbursed.
- Any eligible medical expense described in section 213(d) of the Internal Revenue Code of 1986, as amended, will be reimbursed. Note: If this option is selected, the employer must comply with all applicable HIPAA rules and regulations regarding the use and disclosure of protected health information. For this reason, FCMM recommends that a church considers using a third-party administrator if reimbursing eligible medical expenses other than individual health insurance premiums.