

COMMENTS ON FINAL AND PROPOSED RULES

Concerning

Requirements for Group Health Plans and Health Insurance Insurers Under the Patient Protection and Affordable Care Act Relating to Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections (Published at 75 F.R. 37188)

Submitted By

**Board of Trustees
Utility Workers Union of America National
Health and Welfare Fund**

INTRODUCTION

These comments are submitted by the Board of Trustees of the Utility Workers Union of America National Health and Welfare Fund ("UWUA Fund" or "Fund").

The UWUA Fund is a jointly administered multiemployer health and welfare fund that sponsors and maintains employee health benefit plans known as Health Reimbursement Arrangements ("HRAs") that provide benefits to employees employed in the utility industry throughout the United States. Fund sponsored HRAs are defined contribution individual account "stand-alone" plans. They are considered to be stand-alone in that the Fund does not generally provide comprehensive health plans in conjunction with its HRA, although participating employers generally do maintain other plans.¹

UWUA Fund sponsored HRAs differ from HRA plans sponsored by most single employers in that the individual accounts of participants are not hypothetical. Rather, they are actually funded pursuant to the terms of collective bargaining agreements on a per-participant contribution basis. Contribution rates are fixed over the terms of the applicable CBAs. Contributions, less administrative expenses, are allocated to participant accounts, as are plan earnings.

The accounts of UWUA Fund HRA plan participants are available for their use even after termination of employment or retirement. Participants may draw down their balances to pay for almost any out-of-pocket health expenses (*i.e.*, as long as they would be regarded as deductible per IRC Sections 105 and 213). Unused balances can be carried-over indefinitely while active or retired, and for three years after pre-retirement termination. In addition to being used to cover out-of-pocket costs such as co-pays, co-insurance payments and deductibles, balances can be used to pay insurance premiums not otherwise being paid by the employer or by pre-tax contributions from employees. After termination, unused balances can be applied to COBRA payments; moreover, unused balances can be applied toward premiums for Medicare supplements or for bridge coverage to Medicare eligibility in situations in which employer-provided retiree coverage is not otherwise available. The UWUA HRA plans place no restrictions on the amount of reimbursements that may be paid in any one year (except the amount may not exceed the participant's account balance).

¹ From the perspective of a participating employer and its covered employees, an HRA may appear to be a supplemental benefit to comprehensive medical benefits even though maintained by an independent sponsor: the UWUA Fund Board of Trustees.

The UWUA Fund HRA can be, and in one instance currently is, negotiated as a retiree health plan. In this variant, periodic employer contributions are made while the participant is active; but balances are available for use by the participant *only* after retirement. If adopted early enough during an employee's work tenure, a significant retiree health benefit can be accumulated.²

As noted above, the UWUA Fund HRA typically is adopted as a supplemental benefit in an environment in which employees are receiving comprehensive health benefits from their employer. But, the participation of bargaining parties is not conditioned upon the availability of any other health plans or benefits. A participating employer may, or may not, also sponsor an indemnity type retiree health plan to which the HRA is supplemental or which a retiree can buy into.

COMMENTS

By these comments the UWUA Fund urges the Departments of Labor, Health and Human Services, and Treasury to make clear that the above referred rules prohibiting restrictions on lifetime and annual limits on health care benefits are not applicable to, and therefore do not apply to, defined contribution individual account plans such as those it maintains. While it is clear that HRAs generally are covered by the PPACA, the Fund submits that the annual and lifetime limit provisions are inapplicable. This must be regarded as the legislative intent because restrictions on annual benefit limits and lifetime benefit maximums are entirely incompatible with the nature and structure of stand-alone HRAs. The clear implication of the PPACA's rules phasing in the restrictions on annual limits on benefits and the ultimate elimination of a lifetime maximum on benefit payments is that a plan covered by the Act is obligated to satisfy the increasingly liberalized benefit obligations. Interpreting the PPACA to require that HRA plan, such as those maintained by the UWUA, themselves meet the minimum annual benefit and lifetime benefit requirement effectively would afford the Trustees no option but to terminate the plans thereby preventing the use of a tool that bargaining parties have found extremely useful in crafting benefit programs designed to meet the unique needs of specific employee groups.

A defined contribution fully funded individual account health benefit plan by design makes available to participants only the amounts actually in their personal accounts. As noted above, the UWUA Plans place no restriction on the amount of benefits that may be paid at any time or in any plan year up to the maximum amount in a participant's account. But, they can never provide for payments in excess of a participant's account to satisfy a minimum benefit level requirement because they do not, and cannot, obligate an employer ever to contribute more to a plan than is required by the applicable CBA.

It may reasonably be anticipated that employers who negotiate HRA benefits generally (although not always) will do so recognizing how those benefits coordinate with the traditional indemnity (*i.e.*, defined benefit) plans they make available for active employees and retirees. Still, making clear that funded defined contribution individual account plans are not subject to the PPACA's lifetime and annual limit rules will have no meaningful impact on the application of the Act to "defined benefit" types of health plans. Employing an HRA in connection with a comprehensive benefit package will not change the obligations imposed on the basic plan. Effectively exempting funded stand-alone HRA plans from the obligation to satisfy the annual benefit and lifetime maximum rules will not adversely affect the policy reasons which form the rationale of the Act. But, failing to clearly state that such exemption applies will have an adverse effect: it will create such uncertainty among HRA sponsors as will encourage their discontinuation.

² The Trustees recognize that PPACA's mandates generally are not applicable to retiree-only health benefit plans.

Finally, the Fund wishes to note that it sees no reason why HRA plans need be exempt from any of the other rules made mandatory by the PPACA such as: covering children of participants until they attain age 26, elimination of pre-existing condition exclusions, rules preventing retroactive rescission of coverage. These rules are not incompatible with the fundamental nature of the plans. Indeed, except for the necessity of amending the plans to cover children of participants up to age 26 (which it currently is in the process of doing), the UWUA Fund sponsored HRA plans already comply with those requirements.

In the event that any Agency representative has questions or would like additional information or discussion about the positions expressed above, we would be happy to respond.

Respectfully submitted,

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