



# Fewer Than 50 Employees

November 17 2019 8:08 AM



One of the great inequities in our health care system is the income tax benefit large companies have over small companies with less than 50 employees. The latter receive

no tax deductions for offering health insurance to their employees. In addition, the smaller insurance pool size results in dramatic insurance premium increases, which are very high and often unaffordable.

One solution is to allow small companies to band together to form Association Health Plans (AHPs) in order to increase the size of the insurance pool and bring premium prices down.

The Employee Retirement Income Security Act (ERISA) of 1974 allowed business and employer trade associations to offer insurance plans free of state insurance regulation resulting in fraud frequent insolvency, and unpaid bills. In 1983, Congress amended ERISA and created Multiple Employer Welfare Arrangements (MEWAs), which are regulated by the states, require state licensure, and require financial reporting.

Association Health Plans are a type of MEWA. They give the same tax break to small companies that larger companies have. Under state regulation, fraud and abuse still occur, but far less frequently. ObamaCare allows AHPs to form, but the companies must have some “commonality of interest” to do so besides purchasing health insurance, such as geographic location or common industry.

Following Congressional failure to repeal ObamaCare in 2017, in order to promote competition, choice, and lower premium prices, the Trump administration issued the “final order”, which, among other things, exempted several ERISA restrictions.

However, it not all that simple. An article, entitled “Running with Scissors – and Association Health Plans” by Crowell & Moring LLP states, that “it’s still hard to tell whether AHPs will be like running with scissors or a concept that just might work out well”. Twelve states filed a lawsuit against the Trump administration on the basis of these restriction exemptions and won the suit in the district of Columbia. The administration must rescind or revise the rule or appeal the ruling of Judge John D. Bates, who might also grant a stay of his ruling in order not to invalidate existing AHP plans.

Meanwhile, innovators have been at work devising health insurance options for small businesses and individuals, especially in the area of Health Reimbursement Arrangements (HRAs). ObamaCare authorizes three types of HRAs:

- Integrated HRA – Requires a group health plan and mainly covers out-of-pocket expenses.
- Retiree HRA – reimbursements to retirees.
- Dental/vision HRA – only covers dental and/or vision reimbursements.

- The 21<sup>st</sup> Century Cures Act of 2017 authorizes a fourth type of HRA, the Qualified Small Employer HRA (QSEHRA), available only to employers with less than 50 employees and the self-employed, which reimburses the cost of individual health insurance plans and out-of-pocket expenses. Maximum annual reimbursement is \$5,150 for individuals and \$10,450 for families.

The Trump administration's Final Rule allows two additional types of HRA:

- Individual Coverage IRA (ICHRA) – available in 2020 for employers of all sizes and the self-employed; requires an individual health plan or Medicare; reimburses individual insurance premiums and out-of-pocket expenses; much like a hybrid of an Integrated HRA and a QSEHRA.
- Excepted Benefits HRA (EBHRA) – for employers of all sizes; allows reimbursement for Cobra premiums, short-term medical plan premiums, and dental /vision expenses; annual reimbursement cap is \$1,800; available in 2020.

With a QSEHRA plan, the employer makes a monthly, tax-free contribution to the HRA. The employee uses that money for medical expenses, including medical insurance. The employee submits proof of a medical expenditure. The employer then reimburses the employee up to the allowance amount.

It is estimated that these expanded HRA plans will make private insurance available to over 800,000 businesses and 11,000,000 families.

This all seems very complicated, and it is. Employers and employees will need to consult with their insurance agents, health benefits consultants, care givers, politicians, and others before making some decisions. This is a great challenge for a representative democracy of 330,000,000 million people, and mistakes will be made. However, in a free market, those mistakes can be identified and corrected. More than 30 companies already compete for health care benefits consultation, and, if private insurance continues to flourish, many more such companies may be needed.

For more information about the importance of market principles in achieving rational health care reform, go to website: [drhamiltononhealthcarereform.com](http://drhamiltononhealthcarereform.com).

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