

MEDICARE PREMIUM

REIMBURSEMENT ARRANGEMENTS

how small employers (with fewer than 20 employees) can save money by paying for their workers' Medicare Part B, Part D, and Medigap premiums



Medicare Premium Reimbursement Arrangements

As group health insurance premiums continue to increase, employers are looking for creative ways to help their employees access care while keeping their own costs under control. As a result, we've received a number of questions about whether employers can pay for individual health insurance premiums and/or Medicare premiums for their active and/or retired employees. In this paper, we'll examine those questions as they apply to employers of different sizes and introduce a strategy that could save small employers money.



Question 1

Can employers reimburse active employees for individual health insurance premiums?

When the Affordable Care Act was passed, employers across the country eyed the premium tax credits in the individual market and wondered whether their employees might do better with an individual health insurance plan than their group health coverage. They also wondered whether they could dissolve their group plan, let their employees purchase an individual plan and apply for a tax credit, and give them a portion of the premium savings to help them pay the difference.

This is a great idea, but unfortunately the answer is NO.

Here's why:

- 1) First, anyone with access to "minimum essential coverage" through an employer or government program is ineligible to receive a premium tax credit, and when an employer gives money to their employees to purchase individual coverage—whether they give that money to them directly or run it

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through a Health Reimbursement Arrangement or Section 125 plan—the funding arrangement itself is considered to be a “group health plan” and therefore “minimum essential coverage.” That makes the employee ineligible for a premium tax credit.

- 2) Second, because the funding arrangement is considered to be a “group health plan,” it’s subject to all of the rules applicable to group health plans under the Affordable Care Act. Specifically, group health plans cannot have an annual limit on essential benefits and must cover preventive care on an up-front basis with no cost sharing.

Since the employer reimbursement arrangement does not satisfy these market reform requirements, it is out of compliance and could be subject to a penalty of \$100 per day per employee under section 4980D of the tax code.

Long story short, even though an employer might just be trying to help its employees, paying or reimbursing them for individual health insurance policies is a big no-no and could get the company into a lot of trouble.

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Question 2

Can employers reimburse retired employees for individual health insurance or Medicare supplement premiums?

The answer to this question is YES!

While this may seem very similar to the first scenario, there is a difference. The IRS says that a “retiree-only” HRA is a “group of one” and therefore the market reform requirements do not apply. It is perfectly legal for an employer, regardless of size, to put money into a Health Reimbursement Arrangements and allow its retired employees to use that money to purchase individual health insurance coverage, Medicare supplement policies, or Medicare Advantage or Part D plans.

However, as already explained, an HRA is a group health plan and is therefore minimum essential coverage. Anyone participating in a retiree-only HRA is ineligible to receive a premium tax credit for health insurance purchased through the individual Marketplace. The government considers that to be double-dipping.

While this is good news for companies that provide retiree health coverage, this practice is usually limited to very large employers; the vast majority of companies do not provide retiree health benefits.

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Question 3

Can employers reimburse active employees for Medicare supplement premiums?

This question sort of blends the first two questions together. We know that employers cannot reimburse active employees for individual health insurance premiums, and we know that they can reimburse retired employees for Medicare supplement premiums, but can an employer pay the Medicare premiums for active employees?

The answer is two-fold: YES and NO.

IRS GUIDANCE ON MEDICARE REIMBURSEMENT ARRANGEMENTS

In April of 2015, the IRS confirmed that a “Medicare Premium Reimbursement Arrangement,” under which an employer reimburses (or pays directly) some or all of the Medicare Part B, Part D, and/or Medicare supplement premiums for two or more active employees, is in fact subject to the market reforms applicable to group health plans.

However, as long as 1) the employees participating in the Medicare premium employer payment plan is only offered to employees with Medicare, 2) those employees are also given the opportunity to enroll in the group health plan, and 3) the employer payment plan is limited to reimbursement of Medicare Part B or Part D premiums and excepted benefits, including Medigap premiums, then the plan can be “integrated” with the group health coverage and will not be out of compliance. That’s great news for employers that would like to help their Medicare-eligible employees find alternate coverage outside the group plan – *the IRS says they can do it.*



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CMS MEDICARE SECONDARY PAYER RULES

However, just because the IRS says it's ok doesn't mean every employer can set up a Medicare premium reimbursement arrangement. The reason is because groups with more than 20 employees are subject to the "Medicare Secondary Payer" (MSP) rules. In short, the group plan is primary and Medicare is secondary when a company has 20 or more employees, and there are strict rules that prohibit employers from pressuring or incentivizing active employees to drop off the group plan and sign up for Medicare instead. The Centers for Medicare and Medicaid Services (CMS) governs the Medicare Secondary Payer rules.

For groups under 20, though, these rules don't apply. When a company has fewer than 20 employees, Medicare is primary and the group plan is secondary, and because insurance companies can pay as if an employee has Medicare Part B, whether he or she actually does or not, it's often to an employee's advantage to drop off the group plan and sign up for Medicare and a supplement instead. And now, thanks to the recent guidance, it appears the employer can even help these employees with the cost.



This creates a great opportunity for small employers.

Because age is one of the few permissible rating factors in the small group market, older employees can have a huge impact on a company's health insurance premiums. If a small employer (with fewer than 20 employees) has the option of paying the Medicare Part B, Part D, and Medigap premiums for these Medicare-eligible employees, the group health premiums could decrease and older workers could end up with more comprehensive coverage: ***a win-win!***

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How to Set Up a Medicare Premium Reimbursement Arrangement

It's actually a lot easier than most employers realize to implement a Medicare premium reimbursement arrangement. Here's a quick checklist to make sure you're doing it right:

1

First, make sure Medicare is primary for your group.

In general, this is true when the company has fewer than 20 employees. However, common ownership rules do apply, so if two companies that are under common ownership each have 15 employees, these employees would be added together to determine whether Medicare is primary or not. Since the total count is more than 20, the group coverage is primary, the MSP rules apply, and these companies should not set up a Medicare premium reimbursement arrangement, even though individually they have fewer than 20 workers.

2

Second, make sure you offer group health coverage that provides minimum value to all eligible employees, even if they have Medicare.

Put another way, you can't force Medicare-eligible employees off the group plan. They have the same rights as other active employees and can continue the group coverage if they wish. Many, however, will find the Medicare premium reimbursement arrangement more attractive than the group health coverage.

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3

Third, you may only offer the Medicare premium reimbursement arrangement to employees who are enrolled in Medicare Part A and Part B or Part D.

While this sounds obvious, it seems to indicate that the arrangement is not available and should not be offered to Medicare-eligible employees who have not yet signed up for Medicare – it's a little unclear in the IRS guidance, so be careful what you say to employees who have chosen to postpone their Medicare coverage.

4

Fourth, the arrangement may only reimburse employees for Medicare Part B and D premiums and excepted benefits, including Medigap premiums.

This means that you will need to determine not only the dollar amount but the categories of premiums you will reimburse. This will be determined in part by your budget and in part by the group coverage available to your employees. If you want your Medicare-eligible employees to take advantage of your offer, you need to show them how they will get better coverage at a lower price if they drop off the group plan. Your agent can help you with this task.

That's about it. The funds can be placed in a Health Reimbursement Arrangement, but this doesn't appear to be a requirement; employers can choose to reimburse employees directly on a tax-free basis for these expenses.

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If you'd like to learn more about Medicare premium reimbursement arrangements or if you'd like to explore this strategy for your company, please email us at jme@jmeinsurance.com or call us at **972.245.0266**.



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Reference Material

More information about employer reimbursement for individual health insurance and/or Medicare premiums for active and/or retired employees can be found in the below notices from the Internal Revenue Service.

IRS Notice 2013-54

- This notice provides guidance on the application of certain provisions of the Affordable Care Act¹ to the following types of arrangements: (1) health reimbursement arrangements (HRAs), including HRAs integrated with a group health plan; (2) group health plans under which an employer reimburses an employee for some or all of the premium expenses incurred for an individual health insurance policy, such as a reimbursement arrangement described in Revenue Ruling 61-146, or arrangements under which the employer uses its funds to directly pay the premium for an individual health insurance policy covering the employee (collectively, an employer payment plan); and (3) certain health flexible spending arrangements (health FSAs).

IRS Notice 2015-17

- This notice reiterates the conclusion in previous guidance addressing employer payment plans that these arrangements are group health plans that will fail to comply with the market reforms that apply to group health plans under the Affordable Care Act (ACA). The guidance also addresses integration of Medicare premium reimbursement arrangements with a group health plan.

IRS Notice 2015-87

- This notice provides further guidance on the application of various provisions of the Affordable Care Act to employer-provided health coverage and provides guidance on the application of the market reforms that apply to group health plans under the Affordable Care Act (the market reforms) to various types of employer health care arrangements.

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