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Why the ICHRA might be your best bet for ACA compliance

The Individual Coverage Health Reimbursement Arrangement or ICHRA lets you designate a class of employees who are eligible to enroll.

By **Michael R. Martens** | May 19, 2022 at 03:05 PM

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ACA compliance has fallen to the shadows as most ALEs (Applicable Large Employers) have implemented a MEC and/or MVP solution. The majority of these platforms are on some type of self-funding, while most plans have provided excess claims dollars back to the employer on an annual basis. This seems to be the good news. What has been lost over time is the struggle of reconciling monthly premium statements against weekly payroll. This hands-on involvement at the corporate level has become accepted as a cost of compliance. This is especially true for groups with lower wage/high turnover employees. For the fortunate few employers who work with a TPA providing true weekly administration, this is not an issue.

As of this writing, the penalties that can be levied against an ALE under the Employer Shared Responsibility Provision (ESRP) should be clear to both brokers and ALEs. There has been little change to the ESRP since the inception of compliance. We have all accepted that those will be around for the immediate future and will increase on an annual basis. Due to changes in ACA compliance over the years, employers need to be aware the current administration has both opened exchange-based enrollment off cycle while simultaneously increasing the amount of premium subsidy available to individuals. This increases the financial risk to employers that currently do not have an MVP in place.

This is further complicated by the fact MVP plans can be difficult to obtain for employers who have 500 or less ACA benefit eligible employees. Traditionally these employers have 20 percent or less of their employees enrolled in MEC. Many of the MVP plans remaining require enrollment in MEC above 50%., leaving the employer with the option of either fully or partially funding MEC to drive participation or not having an MVP option. Without an affordable MVP plan the ALE is exposed to penalties on any employee who goes to the Exchange and receives subsidized coverage.

There is a simpler solution. The Individual Coverage Health Reimbursement Arrangement or ICHRA. It allows an ALE to designate a class of employees who are eligible to enroll, thereby allowing other classes of employees to retain their current benefits. The ICHRA allows the employee to go to the exchange and purchase any level of coverage desired.

The ESRP requires that the coverage be affordable according to the current safe harbor rules. The most commonly used 2022 safe harbor for ACA compliance is 9.61% of the employee's household income for self-only coverage. Furthermore, the plan used to set the employer reimbursement is the lowest cost silver plan. Silver plans generally have deductibles of $3,000 or more and out-of-pocket amounts twice the deductible. Premiums vary by geography, gender and age. A good rule of thumb for monthly premium is $475 for self-only coverage on a 40-year-old person. Although this seems like a reasonable monthly premium, it is considered too expensive for many hourly employees. Even if the affordability safe harbor allowed them to purchase this coverage for $200 a month, the deductibles and out-of-pocket cost exceed their means.

This allows the ICHRA to provide protection from both penalties under the ACA without any required enrollment participation. In addition, the administrative cost to provide this plan should not exceed the cost of a single employee penalty for not having the ICHRA and having an eligible employee obtain subsidized coverage. You can find more information at **www.healthcare.gov** and search for ICHRA.

Michael R Martens CBC, LPRT *is the Managing Partner at* ***FIrst Staff Benefits*** *in Knoxville, TN. He has 37 years of experience in group benefits and has focused on ACA compliance since 2010. He is a sixteen consecutive year Leading Producers Round Table (LPRT) qualifier and a sixth consecutive year Circle of Excellence qualifier through the National Association of Health Underwriters (NAHU). He can be reached at* ***mikem@firststaffbenefits.com***