

Fall is Coming! Time for Alphabet Soup: COBRA, MLR and ICHRA

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Topics of Discussion

COBRA

State Continuation

MLRs and Level-Funded Excess Refund Calculator

ICHRA Primer

What's Up?

COBRA



- Counting Employees:
 - FT counts as 1
 - PT counts as fraction of 1 based on FT hour definition
 - On more than 50% of typical business days
- If count is 20 or more Federal COBRA applies.
- If count is less than 20, state continuation is applicable (for fully insured plans only).

COBRA (cont'd)

Plans that must be offered if part of benefits:

- Medical
- Dental
- Vision
- FSA
- HRA/MERP (including ICHRAs)

- [COBRA General \(Initial\) Notice](#) must be distributed to employees enrolling in coverage.
- Plan must notify COBRA administrator within 30 days of event.
- COBRA administrator must send [COBRA Election Notice\(s\)](#) with 14 days of notification from the plan sponsor.
- Qualified Beneficiaries must elect within 60 days of receipt of the election notice.
- Qualified Beneficiaries must pay within 45 days of electing coverage
- May add 2% to the premiums to help cover admin costs.

COBRA Maximum Coverage Periods

- 18 Months:
 - QB term/reduction of hours
- 29 Months:
 - If QB becomes/is disabled during first 60 days of COBRA coverage, then the 11-month extension may be granted.
 - The QB must notify the plan administrator within 60 days of the date of determination and before the end of the initial 18 months.
 - May charge 150% of premium during disability extension.

COBRA Maximum Coverage Periods (cont'd)

18- to 36-Month Period:

- **Secondary qualifying event** – Spouse and dependent children already enrolled on COBRA and experience a secondary qualifying event may have another 18 months of COBRA extended, totaling up to 36 months in some cases:
 - Death of the employee
 - Divorce or legal separation from the employee
 - Dependent ceasing to be eligible due to age

EXAMPLE

Employee leaves the company (termination) and enrolls in COBRA, then divorces their spouse six months later. The spouse would have lost eligibility due to the divorce. In this case, the spouse would be eligible for a total of 36 months of COBRA.

COBRA Maximum Coverage Periods (cont'd)

18- to 36-Month Period:

- **Related to Medicare Eligibility** – Employee becomes entitled to/enrolls in Medicare Parts A or B **while actively working** and later has a termination or reduction of hours:
 - The spouse and dependent children continuation lasts until the later of the 36-month period that begins on the date the covered employee became entitled to Medicare, or the 18- or 29-month period that begins on the date of the employee's termination or reduction of hours.

EXAMPLE

Employee enrolls in Medicare on February 1, then leaves the company (termination) the last day of June. The spouse and any dependent children would be eligible for COBRA starting July 1, for a total of 31 months of COBRA (total of 36 months, less five months based on the date the employee enrolled in Medicare).

COBRA Maximum Coverage Periods (cont'd)

18- to 36-Month Period:

- **Related to Medicare Eligibility** – Employee becomes entitled to/enrolls in Medicare Parts A, B or both **while on COBRA**:
 - Initial Qualifying Event is employee's termination or reduction of hours.
 - Secondary Qualifying Event extends to 36 months if the second event would have caused a Qualifying Beneficiary to lose coverage under the plan in the absence of the initial Qualifying Event.

EXAMPLE

Employee leaves the company (termination) and enrolls in COBRA, then becomes eligible for Medicare and enrolls in that six months later. The spouse would have lost eligibility due to the divorce. In this case, the spouse and dependent children would be eligible for a total of 36 months of COBRA.

COBRA & Medicare Reminder

If an employee drops their group plan due to enrolling in Medicare:

- It is a voluntary drop of the group plan.
 - The employee does not lose eligibility for the group plan by enrolling in Medicare
- It is **not** a Qualifying Event under the law.
- Spouses and/or child(ren) also do not have a COBRA Qualifying Event in this scenario.

State Continuation

- [State Continuation Guide](#) online

	Covered Employers	Qualified Beneficiaries	Qualifying Events	COBRA Duration	Maximum Premium Amount
California	<ul style="list-style-type: none"> • Employers with 2-19 employees • For employers with 20+ employees and fully insured medical plans, Cal-COBRA may extend continuation coverage for up to 36 months. Cal-COBRA extension does not apply to dental and vision plans. 	Any individual who is an enrollee in a group health plan on the day before a qualifying event	<ul style="list-style-type: none"> • Termination (except for gross misconduct) • Reduction in hours • Divorce or legal separation • Loss of dependent status • Employee enrolls in Medicare • Employee death 	36 months. This can be 36 months of Cal-COBRA alone or 18 months of federal COBRA followed by 18 months of Cal-COBRA	110% of the premium; 150% after the first 18 months of continuation coverage for disability
Colorado	Employers with fewer than 20 employees	Employee and dependents, when the employee has been continuously covered for at least 6 months	<ul style="list-style-type: none"> • Termination • Employee's death • Change in marital status (or civil union status) of an eligible employee • Reduction in hours 	18 months	Not specified
Connecticut	All employers	<ul style="list-style-type: none"> • Employee • Employee's spouse • Unmarried children who are under 26 • Stepchildren (on the same basis as biological children) 	<ul style="list-style-type: none"> • Layoff • Reduction in hours • Employee death • Divorce or legal separation • Loss of dependent status • Leave of absence • Termination (except for gross misconduct) • Eligibility for Medicare 	30 months for layoff, reduction in hours, leave of absence, or termination; 36 months for employee's death, divorce, Medicare eligibility, or loss of dependent status	102% of the premium
Delaware	Employers with fewer than 20 employees	Employees and dependents who have been continuously insured for at least 3 months prior to a qualifying event	<ul style="list-style-type: none"> • Employee's death • Employee's termination (other than gross misconduct) or reduction of hours • Divorce or legal separation • The covered employee ages into Medicare • Loss of dependent child status • Certain employer bankruptcies 	9 months	102% of the premium

State Continuation (cont'd)

- Not all States have continuation laws.
- Depending upon the state:
 - An employee must elect continuation for the spouse or dependents to be eligible for continuation.
 - Maximum time of extension ranges from three months to 36 months.
 - Notifications may be required from the employer or continuation administrator.
 - At least one state requires the employee to request from the carrier.
 - Up to 20% premium surcharge may be added.
- State continuation is based on the situs state of the group.

Example: Group based in Texas with an employee in New Jersey, and employee is terminated, then nine months of state continuation would apply.

MLR Rebate and Level-funded Excess Refund Calculator

- Summary tab
 - Basic information and tips to keep in mind
 - **Example:** If rebate/refund amounts are paid to former employees, then federal and state withholding along with FICA taxes must be deducted from the rebate amount. This will also require employers to match the FICA amount on the rebate and issue W-2s to the former employees.

DOWNLOAD a copy of the spreadsheet at:

https://www.benefitmall.com/documents/115/BMALL_MLR_Rebate_Calculator.xlsx

MLR Rebate/LF Excess Refund Calculator – Age Rates

- Enter Rebate/Excess Amount in cell B10 – highlighted blue
- Enter the names, the employer and employee monthly portions of the premiums (Columns A, B, and C, starting on line 15) – highlighted blue

MLR Rebate/Level-funded Excess Rebate Calculator - Age Rates					
Instructions:					
1. Enter the amount of the Rebate or Excess check received in cell B10 (highlighted blue).					
2. Enter the employee names and the amounts paid monthly by the employer and employee in columns A, B and C (highlighted blue).					
3. The Employee Rebate/Excess Amount is what should be given to each employee. The amount should be taxed if the original employee contribution was done pre-tax, such as through a §125 plan.					
Note: This calculator assumes a snapshot method using employees currently on the plan, as allowed under published guidance.					
Total Rebate/Excess Received					\$534.95
Employer Rebate Allocation		\$132.34	(based on % employer pays of the premium)		
Employee Rebate Allocation		\$402.61	(based on % employees pay of the premium -- note: this amount should match the total of column F "Employee Rebate/Excess Amount")		
Employee name	Employer Monthly Contribution	Employee Monthly Contribution	Total Monthly Premium	Employee % of Premium Ratio	Employee Rebate/Excess Amount
Misty	\$380.00	\$1,200.00	\$1,580.00	20.8%	\$83.59
Patti	\$380.00	\$900.00	\$1,280.00	15.6%	\$62.69
Carol	\$380.00	\$380.00	\$760.00	6.6%	\$26.47
Bob	\$380.00	\$1,800.00	\$2,180.00	31.1%	\$125.38
Steve	\$380.00	\$1,500.00	\$1,880.00	26.0%	\$104.48
6			\$0.00	0.0%	\$0.00
7			\$0.00	0.0%	\$0.00
8			\$0.00	0.0%	\$0.00
9			\$0.00	0.0%	\$0.00

MLR Rebate/LF Excess Refund Calculator – Composite Rates

- Enter Rebate/Excess Amount in cell B10 – highlighted blue
- Enter the # of enrolled employees by plan/tier, the employer and employee monthly portions of the premiums (Columns B, C, and D, starting on line 15) – highlighted blue

Note: This calculator assumes a snapshot method using employees currently on the plan, as allowed under published guidance.

Total Rebate/Excess Received	\$38,560.00								
Employer Rebate Allocation	\$15,811.93	(based on % employer pays of the premium)							
Employee Rebate Allocation	\$22,748.07	(based on % employees pay of the premium -- note: this amount should match the total of column I "Total Rebate/Excess by Tier/Plan")							
	# of Employees Enrolled/Tier	Employer Monthly Contribution	Employee Monthly Contribution	Total Employer Share of Monthly Premiums	Total Employee Share of Monthly Premiums	Total Monthly Premium (Employer & Employee Share)	Employee % of Premium Ratio	Total Rebate/Excess by Tier/Plan	Per Employee Rebate/Excess Amount
Tiers by Plan									
Plan 1 - Employee Only	21	\$280.00	\$180.00	\$5,880.00	\$3,780.00	\$9,660.00	20.40%	\$4,640.46	\$220.97
Plan 1 - Employee + Spouse	4	\$280.00	\$640.00	\$1,120.00	\$2,560.00	\$3,680.00	13.82%	\$3,142.74	\$785.69
Plan 1 - Employee + Child									
Plan 1 - Employee + Children	5	\$280.00	\$520.00	\$1,400.00	\$2,600.00	\$4,000.00	14.03%	\$3,191.85	\$638.37
Plan 1 - Employee + Family	3	\$280.00	\$1,210.00	\$840.00	\$3,630.00	\$4,470.00	19.59%	\$4,456.31	\$1,485.44
Plan 2 - Employee Only	8	\$280.00	\$225.00	\$2,240.00	\$1,800.00	\$4,040.00	9.71%	\$2,209.74	\$276.22
Plan 2 - Employee + Spouse	2	\$280.00	\$710.00	\$560.00	\$1,420.00	\$1,980.00	7.66%	\$1,743.24	\$871.62
Plan 2 - Employee + Child									
Plan 2 - Employee + Children	2	\$280.00	\$610.00	\$560.00	\$1,220.00	\$1,780.00	6.58%	\$1,497.71	\$748.86
Plan 2 - Employee + Family	1	\$280.00	\$1,520.00	\$280.00	\$1,520.00	\$1,800.00	8.20%	\$1,866.00	\$1,866.00
Plan 3 - Employee Only									
Plan 3 - Employee + Spouse									
Plan 3 - Employee + Child									
Plan 3 - Employee + Children									
Plan 3 - Employee + Family									
Plan 4 - Employee Only									
Plan 4 - Employee + Spouse									
Plan 4 - Employee + Child									
Plan 4 - Employee + Children									
Plan 4 - Employee + Family									
Totals:	46			\$12,880.00	\$18,530.00	\$31,410.00	1	\$22,748.07	
Employer % of Rebate									41%
Employee % of Rebate									59%

ICHRAs

Individual Coverage Health Reimbursement Arrangements



ACA prohibits employers from paying for coverage outside of the group health plan.



ICHRA regulation proposed in October 2018, finalized in June 2019, first available for employers as of 1/1/2020.

What is an ICHRA?

- ICHRA stands for "Individual Coverage Health Reimbursement Arrangement."
- It is a type of employer-sponsored health benefit that allows employers to contribute funds toward employees' **individual** health insurance premiums.
- ICHRAs can cover just individual premium costs, or the plan can also include 213(d) expenses on a tax-free basis.
- This allows employees to choose their own individual health insurance plan and get reimbursed by their employer for eligible expenses.

Defined Benefit v. Defined Contribution

Group Plans	ICHRA
Defined Benefit	Defined Contribution
Employer Decides Plans	Employer Designs ICHRA Program
Employer Shops	Employee Shops

Agent Considerations

Marketplace

- Employees cannot receive ICHRA contribution and premium tax credit.
- If the person waives the ICHRA, they can receive the premium tax credit provided they qualify under the affordability rules.

Non-Marketplace

- Remember that the Internal Revenue Code prohibits an employer to take salary reductions to pay individual coverages through the Marketplace.
 - This restriction does not apply to those purchasing coverage outside of the Marketplace.
 - This does not require an employer to make salary reductions for employees.

Four Key Elements



No company size restrictions



Unlimited contribution amounts



Employees must enroll in an individual market plan or if eligible, Medicare Parts A & B, or Part C.



Flexible class options

Employers can choose to treat different classes of employees differently based on 11 distinct classes

Allowable Classes

Full-time employees

Part-time employees

Seasonal employees

Employees who are covered by a collective bargaining agreement

Employees who have not satisfied a waiting period for coverage

Salaried employees

Non-salaried employees

Temporary employees of a staffing firm

Non-resident aliens with no US-based income

Employees in the same geographic area

Any combination of two or more classes from above

Class Size Requirements

If an employer chooses to offer an ICHRA to one class of employees and a group health plan to another class of employees, minimum class sizes vary by employer size, based on employee counts on the first day of the ICHRA plan year.

- Employers with fewer than 100 employees must have at least 10 employees in a class.
- Employers with 100-200 employees must have at least 10% of the total number of employees in a class.
- Employers with greater than 200 employees must have at least 20 employees in a class.

Contribution Allowance

There are **no limits** to how much an employer can offer for reimbursement under an ICHRA. Employers can choose what they want their ICHRA to reimburse:

- Insurance premiums only
- Insurance premiums and Section 213(d) expenses

Examples:

- Give every employee a flat contribution amount
- Vary contribution amounts by family size
- Vary contributions by employee age. Higher amounts for older employees but must be structured using a 1:3 ratio. For example, a 21-year-old could get \$100 and a 62-year-old could get \$300.
- Vary by both age and family size

These contribution rules could be applied to all employees, or just a class of employees.

Affordability – Small Group

Affordability is important for small employers because it impacts an employee's ability to receive a premium tax credit (PTC) to help pay for their premiums.

If an ICHRA's contribution amount is **affordable**, employees are not eligible for the PTC.

If the ICHRA contribution is **unaffordable**, employees can choose either the ICHRA or the PTC.

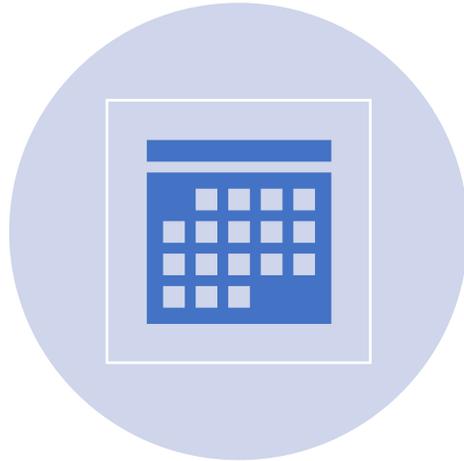
Affordability – Large Group (ALE)

- Large employers are subject to the ACA and must provide affordable health coverage to their employees.
- Large employers must structure the contributions to meet minimum affordability.
 - ICHRA is affordable per the IRS if the remaining amount the employee must pay is less than 8.39% (2024) of the employee's household income.
 - The ICHRA contribution must be greater than the lowest cost silver plan an employee can purchase minus 8.39% (2024) times the employee's household income.

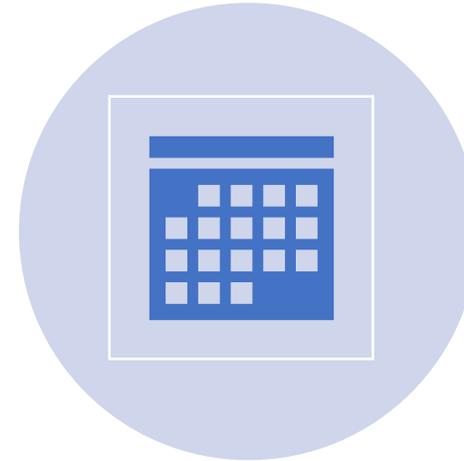
The formula for this calculation looks like:

- Household income x .0839 = X
- $X/12 = Y$
- Lowest cost silver plan – Y = Minimum affordable ICHRA monthly allowance

Special Enrollment Period



ICHRA's can be established at any time during the year, which then creates a **Special Enrollment Period (SEP)** for employees to enroll in the individual health market.



Employees can enroll in an individual health insurance plan 60 days before the ICHRA starts, or 60 days after. The SEP will be **available annually** at the start of each ICHRA's plan year.

Notices

- If you are **terminating** your group plan to offer an ICHRA, you must give employees at least a **60-day advance written notice**.
- You must provide the **General COBRA Notice** to employees eligible for the ICHRA.
 - ICHRAs are subject to COBRA.
 - The HRA portion of the plan, not the individual plan they purchased
 - Premium equivalent is not based on the full amount of the employer contribution but is based on historical/"claims" amounts.

Notices

Individual Coverage HRA Model Notice

USE THIS NOTICE WHEN APPLYING FOR INDIVIDUAL HEALTH INSURANCE COVERAGE

[Enter date of notice]

You are getting this notice because your employer is offering you an individual coverage health reimbursement arrangement (HRA). Please read this notice before you decide whether to accept the HRA. In some circumstances, your decision could affect your eligibility for the premium tax credit. Accepting the individual coverage HRA and improperly claiming the premium tax credit could result in tax liability.

This notice also has important information that the Exchange (known in many states as the “Health Insurance Marketplace”) will need to determine if you are eligible for advance payments of the premium tax credit. An Exchange operates in each state to help individuals and families shop for and enroll in individual health insurance coverage.

You may also need this notice to verify that you are eligible for a special enrollment period to enroll in individual health insurance coverage outside of the annual open enrollment period in the individual market.

I. The Basics

What should I do with this notice?

Read this notice to help you decide if you want to accept the HRA.

Also, **keep this notice** for your records. You’ll need to refer to it if you decide to accept the HRA and enroll in individual health insurance coverage, or if you turn down the HRA and claim the premium tax credit on your federal income tax return.

What’s an individual coverage HRA?

An individual coverage HRA is an arrangement under which your employer reimburses you for your medical care expenses (and sometimes your family members’ medical care expenses), up to

Notices – Model Notices

Individual Coverage HRA Model Attestation: Annual Coverage Substantiation Requirement

Instructions: You have been offered an individual coverage health reimbursement arrangement (HRA) to help you pay for medical care expenses. To enroll in this individual coverage HRA, you must be enrolled in individual health insurance coverage, Medicare Part A (Hospital Insurance) and B (Medical Insurance), or Medicare Part C (Medicare Advantage). You should have received a notice that describes the individual coverage HRA that you are being offered. If you have not, or if you have questions about the individual coverage HRA, contact [add contact information].

If you plan to enroll in the individual coverage HRA, you must complete this form to confirm that you will have individual health insurance coverage, Medicare Part A and B, or Medicare Part C while you are covered by the HRA. If your family members will also be covered by the individual coverage HRA, you need to fill out the applicable section of this form on their behalf.

You must sign and date the form. Your family members do not need to sign or date the form. Please return the completed form to [add instructions for returning the form]. You must return the form by [add deadline for returning the form.]

I attest to the following:

I, _____, am covered (or will be covered) by the following health
(insert name)
coverage: _____.
(insert name of insurance company or indicate "Medicare")

This health coverage began (or will begin) on _____.
(insert date coverage began or will begin)

Instructions: Complete the following if you plan to enroll a family member in the individual coverage HRA. If more than one family member will be covered by the individual coverage HRA, fill out a form for each family member. [This section may also be copied to allow a participant to list all family members on a single form.]

The following family member, _____, is covered (or will be covered) by
(insert name)
the following health coverage: _____.
(insert name of insurance company or indicate "Medicare")

This health coverage began (or will begin) on _____.
(insert date coverage began or will begin)

I hereby affirm that the above information is true and accurate.

Signed: _____

Date: _____

Individual Coverage HRA Model Attestation: Ongoing Substantiation Requirement

Instructions: To receive reimbursement for medical care expenses under your individual coverage health reimbursement arrangement (HRA), you must complete this form for each request for reimbursement.

The individual coverage HRA will reimburse you for a medical care expense incurred during a month only if you have (or had) individual health insurance coverage, Medicare Part A (Hospital Insurance) and B (Medical Insurance), or Medicare Part C (Medicare Advantage) during that month. Similarly, the individual coverage HRA will reimburse you for a medical care expense your family member incurred during a month only if the family member has (or had) individual health insurance coverage, Medicare Part A and B, or Medicare Part C during that month. In this form, you are attesting that you (or your family member) meet this requirement. [If this form is not combined with the form used to seek reimbursement of medical care expenses, add a statement that the reimbursement form is separate.]

You must sign and date this form. Your family member does not need to sign or date the form. Please return the completed form to [add instructions for returning the form, including any applicable deadline].

Complete the following if you're requesting reimbursement of your medical care expense from the individual coverage HRA.

I attest to the following:

I, _____, am requesting reimbursement for a medical care
(insert name)
expense incurred during _____, and for that month I am (or was) covered under
(insert month, year)
the following health coverage: _____.
(insert name of insurance company or indicate "Medicare")

Instructions: Complete the following if you're requesting reimbursement of a family member's medical care expense from the individual coverage HRA.

I, _____, am requesting reimbursement for a medical care expense
(insert name)
incurred by _____, during _____, and
(insert name of family member) (insert month, year)
for that month this family member is (or was) covered under the following health coverage:

(insert name of insurance company or indicate "Medicare")

I hereby affirm that the above information is true and accurate.

Signed: _____

Date: _____

ICHRA Reporting Requirements – Small Group



The IRS mandates the reporting of ICHRAs on Forms 1094-B and 1095-B.



Employers must report and pay PCORI fees for the ICHRA.

ICHRA Reporting Requirements – Large Group

- The IRS mandates the reporting of ICHRAs on Forms 1094-C and 1095-C. (Remember this is for 50 or more employee-sized groups.)
 - In 2021, the IRS made some changes to Form 1095-C, which added two new 1095-C codes for employers to meet the ICHRA reporting requirements.
 - **1T.** The employee's **primary residence location ZIP code** is used to determine the Individual coverage HRA offered to the employee and spouse (no dependents) and affordability.
 - **1U.** The employee's **primary employment site ZIP code** affordability safe harbor is used to determine the Individual coverage HRA offered to the employee and spouse (no dependents) and affordability.
- Employers must report and pay PCORI fees for the ICHRA.

ICHRA Reporting Requirements – Employees

Employees must rely on the data in the employer-required notices.

Employees face IRS clawback of tax credits and penalties if they do not accurately report the eligibility for the ICHRA.



What's Up?

What #ComplianceNerds are Watching Out for Right Now

Other Developments

- **NEW AFFORDABILITY FACTOR** just released
 - For plans beginning in 2025, the updated affordability was just released on 9/9/24.
 - The new affordability factor is 9.02%.

Other Developments (cont'd)

- NEWLY RELEASED MHPAEA FINAL RULES

- Multiple document releases on morning of 9/9/2024
- MHPAEA Final Rules – 538 pages

- Regulations:

<https://www.dol.gov/sites/dolgov/files/ebsa/temporary-postings/requirements-related-to-mhpaea-final-rules.pdf>

Other Developments (cont'd)

- EBSA Updated Cybersecurity Guidance for Employee Benefit Plans
 - Compliance Assistance Release:
<https://www.dol.gov/agencies/ebsa/key-topics/retirement-benefits/cybersecurity/compliance-assistance-release-2024-01>
 - DOL Guidance for Plan Sponsors, Fiduciaries, Recordkeepers, Plan Participants to Protect Info and Assets:
<https://www.dol.gov/newsroom/releases/ebsa/ebsa20240906-0>

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Questions for the Compliance Team?

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Thank you for attending today's session!

Questions?

