NEW ACA GUIDANCE IMPACTS HRAs,
HEALTH FSAs AND CAFETERIA PLANS

The Affordable Care Act (ACA) requires group health plans to comply with certain market reforms. Under the ACA, all group health plans are prohibited from applying annual dollar limits to essential health benefits (EHBs) (annual dollar limit prohibition). In addition, nongrandfathered group health plans must provide coverage for recommended preventive services with no cost sharing (preventive services requirements).

Health reimbursement arrangements (HRAs), health flexible spending arrangements (health FSAs) and cafeteria plans are popular methods of helping employers control costs while providing choice to employees. Depending upon plan design, these arrangements may be subject to the ACAøs annual dollar limit prohibition and preventive services requirements. **If you sponsor one or more of these plans, guidance issued by the Department of Labor (DOL) and Internal Revenue Service (IRS) on September 13, 2013, may require your plan design to be modified beginning in 2014.**

HRAs

HRAs that reimburse only dental or vision expenses or that cover only retirees are excepted benefit HRAs and not subject to the market reforms. HRAs that reimburse medical expenses are **non-excepted**. To escape the annual dollar limit prohibition and preventive services requirements, they must be **integrated** with a group health plan (GHP). The new guidance provides two methods for a non-excepted HRA to be integrated ï the ñMinimum Value Not Required Methodò and the ñMinimum Value Required Method.ò **Neither method requires the HRA and the GHP with which it is integrated to share the same plan sponsor, the same plan document or file a single Form 5500, if applicable.**

	Minimum Value Not Required Method	Minimum Value Required Method
Offer of GHP Coverage	Employer must offer GHP coverage to employee that does not consist solely of excepted benefits.	Employer must offer GHP coverage to employee that provides minimum value under the ACA.
Employee Enrollment Requirement*	Employee receiving HRA coverage must be enrolled in a GHP not consisting solely of excepted benefits, even if sponsored by another employer.	Employee receiving HRA coverage must be enrolled in a GHP that provides minimum value, even if sponsored by another employer.
HRA Eligibility Restrictions	HRA must be available only to employees enrolled in a GHP, even if sponsored by another employer.	HRA must be available only to employees enrolled in a minimum value GHP, even if sponsored by another employer.
Expenses Reimbursable under the HRA	Expenses reimbursable under the HRA are limited to one or more of the following: deductibles, copayments, coinsurance and premiums under the GHP, plus Code section 213 (d) medical expenses for **Non-Essential Health Benefits only**	Any section 213(d) medical expenses may be reimbursed.
Opt out Requirements	Employee (or former employee) must be permitted to permanently opt out of and waive future HRA reimbursements at least annually. Upon termination of employment, either the remaining amounts in the HRA are forfeited or the employee is permitted to permanently opt out of and waive future HRA reimbursements.	Employee (or former employee) must be permitted to permanently opt out of and waive future HRA reimbursements at least annually. Upon termination of employment, either the remaining amounts in the HRA are forfeited or the employee is permitted to permanently opt out of and waive future HRA reimbursements.
****Employers allowing HRA enrollment when the employee is enrolled in a GHP sponsored by another employer should obtain information at the time of enrollment verifying such coverage.*		

Employer-sponsored HRAs cannot be integrated with individual market coverage or with employer payment plans (that reimburse employees for substantiated premiums or pay premiums directly to the insurance company for non-employer sponsored hospital and medical insurance). Therefore, HRAs used to purchase coverage on the individual market under these arrangements will fail to comply with the annual dollar limit prohibition.

HEALTH FSAS

Health FSAs that provide excepted benefits are not subject to the ACA's annual dollar limit prohibition and preventive services requirements. A health FSA is considered to provide only excepted benefits if other GHP coverage not limited to excepted benefits is made available for the year to employees by the employer, and the maximum benefit payable to any participant does not exceed two times the participant's health FSA salary reduction election for the year (or, if greater, $500 plus the amount of the participant's salary reduction election).

Non-excepted health FSAs (where other GHP coverage is not made available and/or there is an employer contribution that exceeds $500) are subject to the ACA's market reforms. Since they will be unable to satisfy the annual dollar limit prohibition and preventive services requirements, it appears that employers sponsoring non-excepted health FSAs may be subject to ACA penalties.

SECTION 125 CAFETERIA PLANS

The ACA added Code section 125(f)(3). It prohibits individual health insurance policies offered through a Health Insurance Marketplace from being qualified benefits under a Section 125 cafeteria plan.

ACTION ITEMS

This article summarizes the new guidance as it applies to HRAs, health FSAs and cafeteria plans. See http://www.dol.gov/ebsa/pdf/tr13-03.pdf and http://www.irs.gov/pub/irs-drop/n-13-54.pdf for details and the application of the guidance to other types of arrangements.

Employers will need to amend plans to comply with the new rules. If you need help determining how the guidance affects your plans, please contact Significa Benefit Services.