CURES ACT – QSEHRA Q&A

REIMBURSEMENT FOR ALLOWABLE MEDICAL EXPENSES

Q: Can the QSEHRA be used to reimburse Medicare Part B, Part D, or supplemental insurance?

A: Yes

Q: Can an employer offer a vision or dental plan?

A: No. To be eligible to offer a QSEHRA, an employer may not offer a group health plan (including a health reimbursement arrangement (HRA) or a health flexible spending arrangement (FSA)) to any of its employees. A group health plan includes a plan that provides only excepted benefits described in Internal Revenue Code section 9831(c) (for example, a vision or dental health plan that qualifies as an excepted benefit).

Q: How are the rules for reimbursement determined?

A: The QSEHRA allows for the reimbursement of all 213(d) expenses, as well as individual premiums, Medicare B, Medicare Supplements, Medicare D, and even after-tax costs of group-based coverage provided through a different employer (such as a spouse's plan or a parent's plan). The employer can decide to reimburse only a subset of these (but if chooses to reimburse premiums, should allow premiums from at least all individual and Medicare plans so that there is comparability of coverage). Note that reimbursement of other group-sponsored medical coverage is only allowed if those premiums were paid with **post-tax** dollars.

Q: If a consumer is on Medicaid (Apple Health) with no premium, is the consumer still entitled to the QSEHRA benefit offered by their employer?

A: Yes, the QSEHRA may be used to reimburse for other out of pocket medical expenses besides premiums. Additionally, utilizing a QSEHRA will not impact an employee's eligibility for Apple Health.

Q: Can QSEHRAs be used to reimburse Health Care Sharing Plan premiums or short term medical plans?

A: Yes. QSEHRAs may be used to reimburse qualifying medical expenses under IRS Section 213(d), which could include Health Care Sharing Plans and Short Term Medical Plans costs, as long as the employee has other MEC coverage.

Q: Is there a listing of reimbursable expenses?

A: Reimbursable expenses include amounts paid for "medical care" as defined by IRS Section 213(d).

Q: Can QSEHRAs be used to pay a spouse's employer premium?

A: QSEHRAs can only be used to reimburse expenses that are paid with after tax dollars. A spouse may not be able to be reimbursed for their premium, but the spouse could get reimbursed for other out of pocket costs associated with their plan, including copays.

Q: Since an employee can cancel their insurance coverage at any time, do they need to provide MEC monthly?

A: Employees are required to provide proof of MEC each time they submit a request for reimbursement.

Q: May QSEHRAs be used to reimburse out of pocket expenses, such as copays or deductibles?

A: Yes

Q: What is the maximum QSEHRA benefit allowed?

A: There is a statutory limit for employer QSEHRA contributions, although the employer can set their contribution lower than this amount or can vary the contribution per employee (based on the rates of a specific benchmark individual market plan). The maximum contributions were $4,950 for employee-only/$10,000 for family coverage in 2017; for 2018 the caps are $5,050 employee-only/$10,250 for family coverage. For QSEHRAs that are in place for less than 12 months, the caps are prorated. In addition, benefits for members not covered the entire year must be prorated.

Q: Do QSEHRAs that only reimburse insurance premiums allow an employee to keep their tax credits?

A: No, a QSEHRA contribution would reduce the employee's tax credit or eliminate it.

Q: What happens if an employer reimburses medical expenses or premiums when that covered member did not have MEC?

A: The entire QSEHRA plan loses pre-tax status as of the date of the incorrect reimbursement, for **all** members under the QSEHRA. Reimbursements under the QSEHRA become taxable income to the employees.

PARTICIPATING IN & OFFERING QSEHRAS

Q: What small businesses can offer a QSEHRA?

A: The QSEHRA was designed specifically for small businesses looking for an alternative to traditional group health insurance. A small business qualifies as an eligible employer if it employs fewer than 50 full-time employees and doesn't offer a group health policy to any of its employees.

Q: Who qualifies as an eligible employee under a QSEHRA?

A: When a business offers a QSEHRA, all full-time employees and their families are automatically eligible. The business can also choose to extend eligibility to part-time employees, though it must offer them the same monthly allowances full-time employees receive.

Q: If an employer offers a QSEHRA to its employees, are all employees required to participate, even if the QSEHRA negatively affects the amount of premium tax credits the employee will receive?

A: Yes, participation in a QSEHRA is not optional. However, an employee is not required to utilize the QSEHRA (i.e., submit requests to the employer for reimbursement of the employee's out of pocket medical expenses). If an employee is receiving premium tax credits, they may want to adjust the amount of tax credits they receive to avoid having to pay back some or all the tax credits they receive when filing their taxes.

Q: May an employee offer a QSEHRA to full-time employees (30 hours/week per ACA) only? Management only?

A: An employer **may** offer QSEHRAs to full-time employees only but **may not** offer QSEHRAs to management personnel only. If an employer offers a QSEHRA to its employees, it must offer it on the same terms to all eligible full-time employees and must offer it on a uniform basis (e.g., same level of contribution for all eligible employees).

Q: For employees who terminate employment and no longer qualify for the QSEHRA in the middle of the year, must benefits be prorated?

A: It depends on when the reimbursement is provided. If reimbursements are paid prior to termination, the reimbursements do not have to be retroactively pro-rated and no tax rules would be violated. However, if paid during the runout period after termination, the QSEHRA cannot reimburse medical expenses more than the pro-rated maximum.

Q: Can an employer offer a QSEHRA and provide HSA contributions?

A: If the QSEHRA provides for reimbursement of only premiums, then yes, the employer (and the employee) can deposit funds into the employee's HSA bank account. However, if the QSEHRA reimburses medical expenses, then HSA deposits are not allowed.

Q: What notification to employees is required?

A: An official summary plan description (SPD) is not required, however, the employer must provide a notice to all eligible employees 90 days prior to the start of the QSEHRA, 90 days prior to each renewal, and by the first day of eligibility for new hires. The notice needs to include such things as the amount of the available funds to the employee, information about employees notifying their Exchange if they are eligible for subsidies, and what happens if they do not maintain Minimum Essential Coverage (MEC). The penalty for not providing the required notice is $50 per employee, to $2500 maximum per year.

Q: What constitutes proof of Minimal Essential Coverage (MEC)?

A: The proof must be a document from a third party (e.g., ID card, explanation of benefits) and an attestation by the employee that the coverage is MEC, the date coverage began, and the name of the provider of coverage. This proof must be provided before the first reimbursement each plan year, and the employee must attest to having MEC with each reimbursement request during the plan year.

Q: What must employers report on employees' W-2?

A: The ***total*** QSEHRA amount available to that employee for the calendar year must be included on W-2, box 12, code FF. These amounts are prorated based on the number of months an employee is eligible for the QSEHRA during the calendar year.

QSEHRA Impacts

Q: Does an employer's offering of a QSEHRA to its employees also impact other family members' eligibility for premium tax credits?

A: If one family member is offered a QSEHRA, all family members are offered the QSEHRA.

Q: If an employee receives a QSEHRA benefit, will they lose all their premium tax credits?

A: A subsidized employee will ***either*** have their tax credit reduced or eliminated depending on the amount of the QSEHRA permitted benefit. To determine the impact a QSEHRA will have on your tax credit, please contact *Washington Healthplanfinder* at 1-855-923-4633 (TTY: 1-855-627-9604).

Q: Would a QSEHRA be beneficial to my employees?

A: A QSEHRA will not benefit an employee that is eligible for tax credits and seeking coverage through *Washington Healthplanfinder*. The premium tax credit the employee receives will be reduced by the amount of the QSEHRA or eliminated completely. If an employee is not eligible for tax credits because their income is too high (higher than 400% FPL), or they are not seeking health insurance through *Washington Healthplanfinder*, a QSEHRA could be beneficial to them.

Q: How does a QSEHRA affect employees?

A: The employee needs to have other health coverage that qualifies as Minimum Essential Coverage (MEC), provide proof of coverage to the employer at the beginning of the plan year, attest to having MEC with each request for reimbursement, and may be required to substantiate any requested reimbursements. If an employee enrolls in a plan through *Washington Healthplanfinder* and qualifies for tax credits, their eligibility for tax credits will be either reduced by the amount of the QSEHRA or eliminated entirely. If they take advanced premium tax credits during the year at the same time they have the QSEHRA, they could be required to pay back tax credits when they file taxes.

Determining Affordability

Q: Is there a calculator available to consumers to help them determine the impact of a QSEHRA?

A: Although the affordability calculation is described in the Cures Act and IRS Guidance 2017-67, it is best for consumers to contact *Washington Healthplanfinder* at 1-855-923-4633 (TTY: 1-855-627-9604) to help determine the impact a QSEHRA will have on their APTC eligibility. We can walk them through the calculation and determine any potential impact on their premium tax credits.

Q: What is the federal formula for determining affordability?

A: *See below*

____________	--	____________	=	____________
Monthly Self-Only SLCSP		Self-Only Monthly Permitted QSEHRA Benefit Amount		Answer 1
____________	X	0.0956	=	____________
Monthly Household Income (MAGI)		Expected Contribution 9.56%		Answer 2

If the amount in "Answer 1" is ***greater than*** the amount in "Answer 2," the QSEHRA is not considered affordable. The amount of premium tax credit a household is eligible for will be reduced by the amount of the QSEHRA permitted benefit. If you were approved for a tax credit when you applied, you may want to consider lowering the amount of premium tax credit you take each month by the amount of the QSEHRA permitted benefit offered to you.

If the amount in "Answer 1" is ***less than*** the amount in "Answer 2," the household will no longer qualify for premium tax credits. If you were approved for tax credits when you applied for coverage, you may want to consider lowering your slider (reducing the amount of tax credits you receive) to $1 to maintain the 90-day grace period.

Q: What is the 90-day grace period and why should an employee who loses their APTC reduce their slider to $1 instead of $0?

A: Under the ACA, QHP enrollees ***receiving a tax credit*** are given a 90-day grace period to make a payment after it is due, before being terminated for non-payment. QHP enrollees ***not receiving a tax credit*** are given a 30-day grace period to make a payment after it is due, before being terminated for non-payment. So, employees eligible for tax credits need to receive at least $1 of tax credit each month to receive the 90-day grace period.

MISCELLANEOUS

Q: How does offering a QSEHRA benefit employers?

A: Offering a QSEHRA allows employers to contribute to their employees' medical expenses using pre-tax contributions without creating a group health plan. Employers may choose an amount to contribute on an equal basis to all qualifying employees, but do not have to comply with ERISA group health plan requirements that generally apply to employer-sponsored insurance. QSEHRA contributions are deductible expenses for employers and are provided to employees tax-free.

Q: Can all forms of entities provide QSEHRAs (for-profit, non-profit, sole proprietors, C-Corp, S-Corp, LLC, etc.)?

A: Yes, all small employers with less than 50 full time employees are eligible to offer QSEHRAs.

Q: Where on *Washington Healthplanfinder* will one be asked to enter in the amount of their QSEHRA?

A: *Washington Healthplanfinder* does not capture QSEHRA information. Instead, QSEHRA information is submitted by the employee when filing their federal taxes (using the information reported on their W-2).

Q: If an employee leaves an employer, what happens to unused QSEHRA funds?

A: Employees do not accumulate QSEHRA funds. Employees must submit requests for reimbursement of their medical expenses, including premium costs. Once the employee leaves, they are no longer eligible for QSHERA reimbursement.

Q: Do HIPAA rules apply?

A: QSEHRAs are not group health plans so HIPPA rules do not apply.

Q: Is a summary of benefits and coverage (SBC) or a summary plan description (SPD) required for a QSEHRA like it is on an HRA?

A: No, QSEHRAs are not required to have SPD or SBCs because a QSEHRA is not a group health plan. Therefore, QSEHRAs are generally not subject to group health plan requirements under the Internal Revenue Code, ERISA, or the Public Health Services Act.

Q: Can the employer contributions roll over from year to year?

A: Yes. However, the amount of QSEHRA benefits available each year cannot exceed the statutory limits ($5,050 for self-only and $10,250 per family).

Q: Do QSEHRAs have to be administered by a third party or can an employer do it themselves?

A: QSEHRAs are not required to be administered by a third-party administrator, but employers may wish to seek professional expertise in setting up a QSEHRA to make sure they are eligible to offer this benefit and are implementing the QSEHRA in a manner that preserves its tax-favored status.

Q: Can an employee choose a health saving account (HSA) version and make contributions?

A: An HSA is different from a QSEHRA or an HRA. An HSA is a type of medical savings account that allows consumers to save for medical expenses on a tax-free basis and requires consumers to enroll in a high deductible health plan. An HRA are employer-funded group health plans that reimburse employees tax-free for qualified medical expenses. A QSEHRA is ***not*** a group health plan.

Q: Does a QSEHRA qualify as taxable income that is reported on their W-2?

A: The QSEHRA permitted benefit amount is not taxable income to the employee but will be reported as a QSEHRA contribution on each employee's W-2 and reported to the IRS on the employee's tax return.

Q: Are there non-discrimination rules?

A: Section 105 nondiscrimination rules apply; testing must be done every year. In addition, an employer cannot discriminate as to whom they cover under a QSEHRA. At a minimum, they would need to cover all full-time employees. Some exclusions are allowed, including seasonal, part-time, and some union employees, as well as those under age 25 and non-resident aliens. Under QSEHRA, part-time employees are those working less than 25 hours per week (less than 35 hours per week in some instances) and seasonal employees who work less than 7 months (less than 9 months in some circumstances). The employer can impose up to a 90-day waiting period. Eligible employees are not allowed to waive an offering of a QSEHRA.

Q: What other record keeping requirements are there?

A: The employer must maintain proof that the employee is covered under a MEC plan for any month for which reimbursements were provided under the QSEHRA. If MEC coverage is not maintained, then the employee cannot be reimbursed. In addition, the employee must provide substantiation for their reimbursement claim, such as receipts.