ICHRA BROKER AND BENEFITS CONSULTANT STRATEGY DISCUSSION

EXECUTIVE SUMMARY & OUR PREDICTION

In July 2019, the IRS, DOL, and HHS released the Individual Coverage HRA (ICHRA) Final Regulations. To some in the industry, it felt a bit like Bill Murray's 1993 movie *Groundhog Day*. Haven't we been here before? Didn't a bunch of people get all excited about Private Exchanges and letting employees pick their own individual health plan back in 2010? We all know how that turned out after the Obama Administration issued rules in 2013 prohibiting employers from paying for an employee's individual health insurance policy. With the stroke of a pen, Private Exchanges were relegated to places where employees could only buy "the other stuff."

So here we are again. Effective January 1st, 2020, employers can give tax-free money to employees and let them use the funds to buy (almost) whatever individual health insurance policy they want. Will this be a bigger deal this time? How many employers will choose to go down this path? Will ICHRAs be attractive to employees? How will this affect the individual market? These are big questions, the answers to which will determine whether ICHRAs will have a significant impact on your employee benefits business.

The Benefit Comply staff has been studying the ICHRA rules and talking to brokers, employers, and TPAs across the country. We are going to make a prediction that some of you may not agree with. We would love the opportunity to discuss this in-depth at any time.

ICHRAs are going to be a bigger deal than many think.

We may be wrong, but every day we get new information that makes us more confident about this prediction…

ICHRA BASICS

Before we make our case, let's review some important ICHRA rules:

- An employer can make tax-free funds available through an ICHRA that allows employees to use the funds to pay for individual health insurance premiums, Medicare, and Medicare Supplement policies.
  - The ICHRA must be "integrated" with individual coverage (i.e., must be available only to those who show proof of coverage under an individual health plan or Medicare). To avoid ERISA application to the individual policies, the employer must refrain from restricting integration to certain carriers or policies.
  - An ICHRA can also be set up to allow reimbursement of §213(d) expenses, but employers can already do that with a traditional HRA so it may be more common for ICHRAs to be used as a vehicle for paying for individual health insurance or Medicare.
- ICHRAs can be offered by class of employee (as defined in the regulations).
  - Eligible classes include Full-time; Part-time; Seasonal; Salaried; Non-salaried; Employees working in the same geographic location (insurance rating area, state, or multi-state region); Employees covered by a collective bargaining agreement; Employees who have not satisfied a waiting period; Non-resident aliens with no U.S.-based income; and Some temporary employees of staffing firms.
  - An ICHRA cannot be offered to employees in a class who are eligible for a traditional group health plan. An employer must offer one or the other to a particular class.
  - If an ICHRA is offered to a class of employees, it must be offered under the same terms to all employees in that class. For example, if an employer offers an ICHRA to part-time employees, it must be offered under the same terms to ALL part-time employees. The employer may not offer the ICHRA to just part-time employees working 25–30 hours.
  - Classes can be combined to make the ICHRA offer. For example, the employer could offer an ICHRA to all non-salaried employees working in rating area number 15 in Florida, and offer a traditional group health plan to all other employees.
    - There must be a minimum number of employees in an ICHRA class offer when using full-time/part-time, salaried/non-salaried, rating area, or a combination of these classes.
  - Everyone asks if you can class out just Medicare-eligible employees and offer an ICHRA to them… No, you can't. You also can't class out employees by title or position.
- If an ICHRA is offered to a class of employees, the employer must consider §105(h) and §125 non-discrimination rules. For example, if an employer offers an ICHRA to a class that consists primarily of lower-paid employees and a self-insured health plan to classes made up of higher-paid employees, the self-insured plan may be discriminatory under §105(h). Similarly, if many non-highly compensated employees are no longer participating in the cafeteria plan due to the availability of the ICHRA (which cannot be included in the cafeteria plan), the cafeteria plan may be discriminatory under §125.
- An ICHRA is considered an offer of minimum essential coverage (MEC) allowing applicable large employers to comply with §4980H(a). It can also be designed to meet the minimum value and affordability requirements of §4980H(b).
- There are other requirements, such as substantiation rules and notice requirements.
- There are also several open issues that still need to be addressed by regulators, including how to calculate COBRA rates and questions about affordability.

WHY YOU SHOULD CARE

Now we'll make our case for why you and your firm need to pay close attention to ICHRAs.

The Case Against ICHRAS

Many say ICHRAs will never take root, for a number of reasons. Below, we offer discussion points related to several of these contentions.

Point	Counter Point
The individual health insurance market is broken and volatile, with high rates, limited plan choices, narrow networks, and limited carrier choices.	• This is correct in many areas of the country, but the individual health insurance market varies dramatically from state to state. Because geography is an allowed ICHRA class, an employer could offer an ICHRA to employees in areas with a competitive individual market. • If this takes off, and provides more participation in the individual market, it may drive better coverage options at better rates; it may even put some competitive pressure on the group market. • Vericred, a health plan data company, collects rate data nationwide. They have found that individual plan rates are below, or close to, small group rates in a significant portion of the country (see appendix A). • CMS, who is actively promoting this option, has a tool and data available to help employers determine affordability here – https://www.cms.gov/CCIIO/Programs-and-Initiatives/Employer-Initiatives/Employer-Initiatives • Some carries are considering off-Exchange individual plan products that will be available only through an ICHRA platform.
Employers do not want to lose control of the management of the health benefits offered to employees.	• This may be true for many employers, but a significant number of employers see the management of the group health benefits as a necessary evil rather than a strategic advantage. • This might provide an opportunity for employers to still control their spend while providing a more tailored benefit offering. Group health plans must be chosen for the best fit across the entire eligible-employee population, whereas access to individual health plans allows coverage to be chosen according to individual employee needs.

This is a significant change in how benefits are offered that will not be attractive to employees.	• The truth is that employers choosing this option and desiring to maintain or increase employee satisfaction with the benefits offered will have to spend time managing this change and educating employees. However, it may be sold as an improvement versus taking something away. And with the right level of employee support, it might be attractive – especially in areas of the country where there is a competitive individual market.
Individual plans are community-rated, so an employer cannot have any impact on costs.	• Again – yes, this is true, but many employers have high plan costs due to circumstances beyond their control (shock claims, employee demographics, etc.); moving high cost groups like this to a community-rated platform might make financial sense.
ICHRAs were created by regulatory action by the Trump Administration; no law was changed; Congress did not have to pass anything. A Democratic administration could undo ICHRA rules just as quickly.	• This is true. However, if enough employers implement ICHRAs, it could actually help stabilize the individual market. • It's not clear that the Democrats are against this model. They opened the door to this by creating the QSEHRA while Obama was in office.

Other Considerations

- Take Command Health has raised $3.2 million to launch its ICHRA platform. The company set up 100 total replacement employers on ICHRAs effective January 1, 2020. 30% of the employers were large group (over 50 FTEs).
- There is an entire industry of companies who are not broker friendly, like Gravie and PeopleKeep (the old Zane Benefits), who will be approaching your clients with this solution. They will not be presenting employers with all options – they will be trying to convince employers to drop group health plans and instead offer an ICHRA. Your team must be prepared to respond.

CASE STUDIES – EMPLOYERS CONSIDERING AN ICHRA STRATEGY

We have already had discussions with brokers or employers who are considering an ICHRA offering for the following reasons:

Part-Time Benefit Plan

- Offer an ICHRA to attract part-time employees for whom the employer cannot afford to offer the traditional group health plan. This is tricky, though. If the employer offers this and part-time employees enroll, the employee cannot qualify for tax subsidies toward coverage through a public Exchange.
- Remember that if an employer makes an ICHRA offer to a class of employee, it must make the same offer to all employees in that class. So in this case, the employer could not offer an ICHRA to just some of their part-time employees unless classes are combined (e.g., part-time employees in a particular state would be a valid class combination).

Self-Insured Plan Laser

- Offer an ICHRA to a subset of employees with the highest risk. In one conversation, we learned that an employer with employees across the country was considering making an ICHRA offer to only one location. That location happened to have a family member of an employee with a $1,000,000+ claim that the stop-loss carrier was going to laser.
    - Yes, there are huge risks here – HIPAA non-discrimination rules, ERISA §502 claims, etc. – but faced with limited options, an employer who is backed into a corner may be willing to take those risks. There will also be competitors who are going to present this option to your clients.

Large Experience-Rated Group with High Claims

- We know of a 200+ life employer offering good benefits and paying 80% of premium. They have had three years of bad claims and large rate increases. The employer was able to fund an ICHRA with enough money to allow employees to buy gold and platinum individual plans and the employer still saved money.
- We believe this scenario poses one of the greatest challenges to the current group health plan model offered by most mid-size to large employers. If an employer's group health plan rates are significantly higher that the community rate average, and the employer is not willing to risk carving out a particular class of employees, it may make financial sense for some of these employer to move their employees to an ICHRA platform.

An Alternative to MEC

- An ICHRA offer is automatically a minimum essential coverage (MEC) offer of coverage for purposes of §4980H(a), no matter how little the employer makes available through the ICHRA. This could be a low-cost alternative for large employers currently deploying a MEC strategy to avoid the (a) penalty.

Small Employers Looking to Provide More Choice to Employees

- This will be even more common in areas where the individual market is competitive with the small group market (See appendix A).

OUR CLOSING ARGUMENTS

We don't pretend to know how many employers will actually move away from traditional group health benefits to the ICHRA model. What we do know is that many employers will have questions, and your team must be prepared to have effective ICHRA discussions.

Defense

ICHRA vendors, individual health insurance brokers, and your competitors will be talking to employers about ICHRA as an option to consider. Did you see that Willis Towers Watson already announced their "ICHRA Consulting Practice"? Even if it makes no sense for a particular employer to move to an ICHRA, your staff must be competent to have the ICHRA conversation with the client.

Offense

Producers should be contacting every prospect and asking one simple question: "*Has your broker talked to you about whether an ICHRA is a good option for you?"*

What About Agency Compensation?

We all know it would be hard to live on the commissions from individual health insurance policies, even if they increase slightly in connection with ICHRA offerings. But we believe there is an important role for employee benefits consultants who are able to help employers make the right strategic and financial decisions. Large groups considering an ICHRA will need good advice, much in the same way they need help transitioning to a self-insured arrangement. Will employers be willing to pay a consulting fee, as they do today when they are self-insured? Think of the value you bring to an employer considering an ICHRA.

- Help select a qualified vendor to administer the arrangement.
- Help make sure the ICHRA offer meets §4980H requirements, including an affordability analysis.
- Make sure the program is set up in compliance with all applicable rules and regulations – not just ICHRA rules, but also ERISA, COBRA, nondiscrimination rules, etc.
- Be aware that providing employee communication and assistance may be even harder than with a traditional group health plan, especially when it comes to navigating so many individual policy options.

Agency Action Steps

- Identify current clients with the highest PEPM plan costs – these are the groups at greatest risk for a competitor to offer an ICHRA strategy.
- Decide as a firm how you will respond to a group considering a risky carve-out strategy.
- Train account management staff.
- Train producers how to use ICHRA as a wedge.
- Develop relationships with ICHRA vendors so that you have a solution to offer if a client chooses to go the ICHRA route.

How Benefit Comply Can Help

- We offer **internal staff training.**
- We can keep you **up-to-date** as the rules are clarified and changes are made.
- We provide **"Using ICHRAs to Generate Sales" training** for producers.
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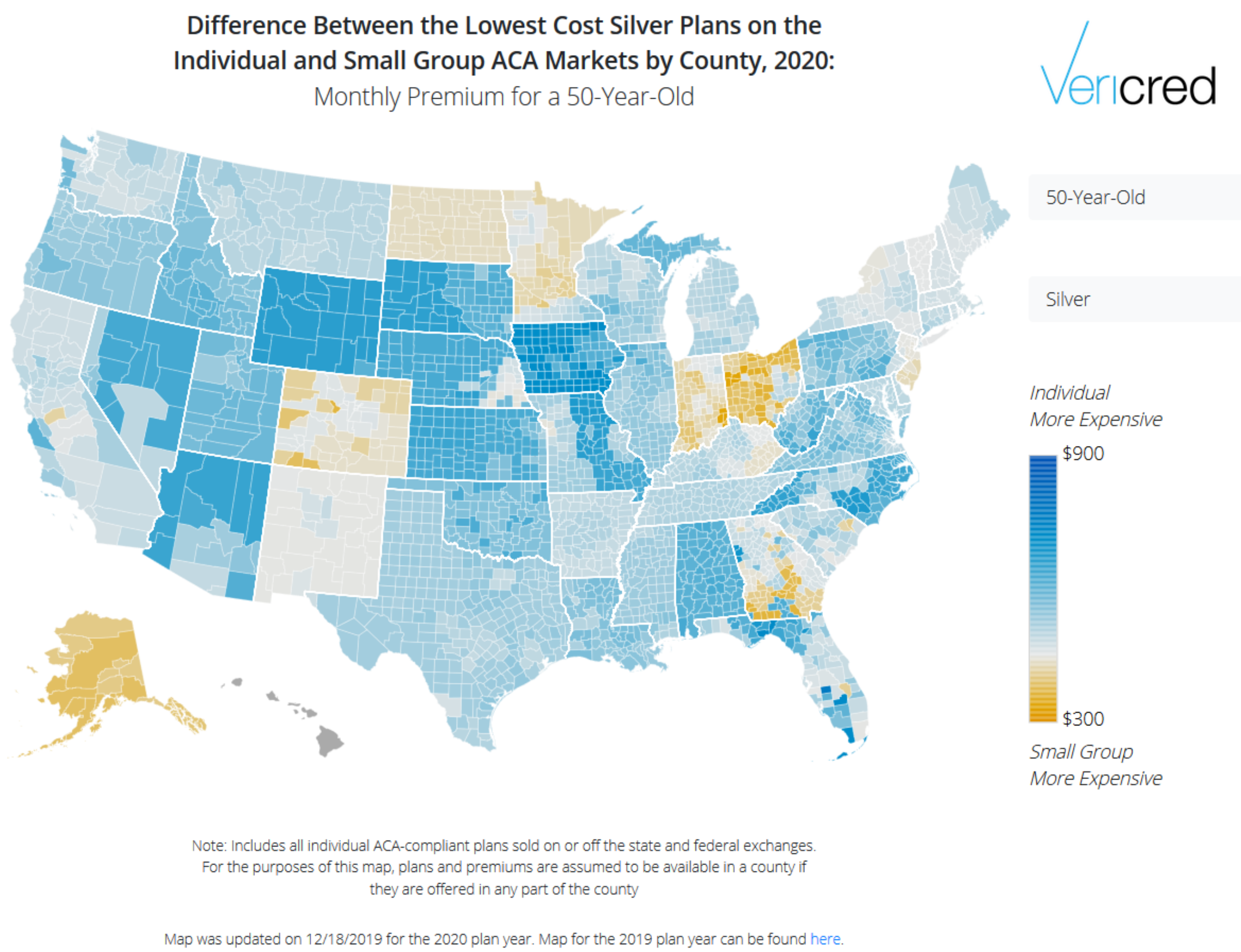
Appendix A



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