MHBE

Small Business Programs Advisory Committee

January 25, 2023
1:00PM – 3:00PM
Via Google Meets

Members Present:
Glenn Arrington
Neil Bergsman
Ainisa Broadway
Brandon Burbage
Rob Cohen
Jon Frank
Ileana Gonzales
Al Helfenbein
Cindy Hipwell
Mark Khatib
Daniel Koroma
Lane Levine
Rob Poli
Kimberly Prescott
Michael Rachesky
Sandy Walters
Rick Weldon

Staff
Theresa Battaglia
Johanna Fabian-Marks
Makeda Hailegeberel
Elizabeth Leo
Amelia Marcus
Andrew Ratner

Members of the Public
Allison Mangiaracino

Welcome and Message from MHBE Leadership
Makeda Hailegeberel, Small Business Programs Manager at the Maryland Health Benefit Exchange (MHBE), welcomed attendees and reviewed the agenda.

Co-Chair Vote
Ms. Hailegeberel announced the nomination of Committee members Jon Frank and Lane Levine as Co-Chairs. Rick Weldon moved to approve the nominations, with a second by Rob Cohen. The Committee voted to approve Mr. Frank and Mr. Levine.

SBPAC Charter Vote
Ms. Hailegeberel asked members to vote on approving the Committee's charter. The Committee voted to approve the charter.

Approval of Minutes Vote
Next, Ms. Hailegeberel asked the Committee to vote on approving the minutes of the November 30, 2022, meeting. The minutes were approved without amendment.

ICHRA/QSEHRA Plans & Integration

Ms. Hailegeberel recalled for the Committee that they had previously discussed three small business programs, one of which was to utilize individual coverage health reimbursement arrangements (ICHRAs) or qualified small employer health reimbursement arrangements (QSEHRAs). She noted that this program would have the MHBE partner with one or more ICHRA administrators to integrate with Maryland Health Connection (MHC) and/or MHC for Small Business. The ICHRA partner would be identified through a request for information (RFI)/request for proposals (RFP) process and would be charged with the responsibility to train and support producers, manage compliance documents, determine employer contribution levels, and assist with employee plan selection. She added that ICHRA members would use a separate portal for plan shopping and enrollment.

Next, Ms. Hailegeberel noted that the Committee will have a presentation by a subject matter expert in ICHRAs and introduced Kyle Estep of the organization Take Command. She shared that Mr. Estep has worked in the health insurance industry for many years and understands well both the history and future direction of healthcare.

Sandy Walters, noting that ICHRA rules require that all possible plans be offered to employees whereas MHC does not include all plans available on the market, asked that the presentation address this potential disconnect.

Mr. Estep began his presentation by noting that the acronyms and terminology used to refer to this type of arrangement may seem complicated but that the arrangements are very simple in concept. He explained that ICHRAs are a new way for employers to offer health insurance to employees by providing a tax-free allowance to employees to purchase individual health insurance policies. He cautioned that this type of arrangement is not a perfect fit for every organization, pointing out that businesses choosing this method tend to be small.

Next, Mr. Estep discussed the history of ICHRAs/QSEHRAs, beginning with the 21st Century Cures Act of 2016's authorization of QSEHRAs. An executive order in 2017 tasked the federal government with authorizing association health plans, extending short term plans, and broadening the application of health reimbursement arrangements (HRAs). These efforts led to the finalization of ICHRA rules in 2019, with the plans themselves becoming available in January 2020. While QSEHRAs are available only to small businesses, ICHRAs are authorized for organizations of any size. Mr. Estep pointed out that, just as ICHRAs were becoming available, the COVID-19 pandemic emergency began and drew the focus of employers and the health care system broadly, meaning many still have not heard of ICHRAs.

Mr. Estep then began describing how ICHRAs work. He contrasted the traditional group insurance model, wherein employers choose a plan or small collection of plans to offer their employees, with ICHRAs, where employers give their employees an allowance to purchase individual health coverage on the open market. While traditional HRAs are required to be paired with a group plan and can only be used to offset direct medical

expenses like copays, ICHRAs make it possible for the allowance to be used for insurance premiums themselves.

Next, Mr. Estep discussed the advantages of ICHRAs for both employers and employees. He explained that employers can precisely set budgets and cap expenditures, larger groups can avoid medical underwriting leading to expensive plan renewals, employees can choose whether to participate without triggering concerns about participation rates, and businesses can satisfy their employer mandate and keep any unclaimed funds. ICHRAs provide employees a greater level of control and portability of coverage since they are the policyholders.

Mr. Estep then described the qualities of businesses that would or would not prefer ICHRAs/QSEHRAs. He explained that most of the businesses offering this type of arrangement are offering health benefits for the first time or desire more flexibility, budget control, and risk mitigation in the health benefits they offer. Employers who offer higher pay to offset the cost of individual health insurance and employees who receive such increased pay would enjoy tax savings by using one of these arrangements. By contrast, employers who would not like this type of plan may include those whose employees qualify for large tax credits, those who currently offer a Preferred Provider Organization (PPO) type plan that is well liked by all stakeholders, or those who operate in geographies wherein individual health plans are not as good as plans offered to groups.

Next, Mr. Estep discussed ICHRAs and QSEHRAs in more detail, including differences between the two arrangement types. He noted Mr. Walters' question prior to his presentation, replying that employees must enroll in Affordable Care Act (ACA)-compliant coverage to secure the reimbursement. QSEHRAs are limited to organizations with up to 49 employees and have reimbursement limits set in regulation. ICHRAs have neither size limitations nor reimbursement limits. ICHRAs allow employers to define classes of employees who are offered different reimbursement amounts, while QSEHRAs are required to provide the same reimbursement to all employees. Mr. Estep offered examples of permitted employee classes—an organization with employees in two geographic areas where the cost of insurance is very different might offer more reimbursement in the more expensive market by separating those geographies into employee classes, or an organization can offer one reimbursement amount to full time employees and another to part time employees.

Rob Cohen asked whether classes can be established by salary. Mr. Estep replied that such classes are not permitted, nor are classes by job role or title.

Jon Frank asked whether classes can be established by age. Mr. Estep clarified that allowance amounts can vary by age but that such variances are distinct from employee classes. With the goal of achieving purchasing power parity among employees, employers can provide more allowance to those whose insurance premium will be higher due to age.

Mr. Cohen asked whether variation in allowance based on age would trigger concerns around unfairly favoring employees who are already more highly compensated due to being further along in their careers. Mr. Estep replied that he has not experienced any situations giving rise to such concerns but noted that some people in the compliance realm have voiced similar apprehensions regarding discrimination testing.

Lane Levine asked whether allowances can be varied by utilization patterns, noting that his younger employees tend to utilize mental health services more often than older people. Mr. Estep replied in the negative, adding that the allowance must be equitable regardless of utilization patterns and that such variations in utilization should be addressed during employees' plan selection.

Michael Rachesky asked for clarification as to whether ICHRAs are ACA-compliant and satisfy the employer mandate. Mr. Estep replied that ICHRAs can be compliant and satisfy the mandate provided that the allowance amount is high enough to meet affordability standards.

Mr. Rachesky asked whether ICHRA funds can be used for both insurance premium and medical expenses. Mr. Estep clarified that ICHRAs can be set up in multiple ways—premium only, medical expenses only, or premium and medical expenses together. He added that setting up an ICHRA for medical expenses only would not make much sense since that would essentially be a traditional HRA, except that traditional HRAs must be paired with a group insurance plan.

Mr. Rachesky expressed concern that medical-expense-only ICHRAs would be used to pay for medical services in lieu of insurance, raising potential liability and compliance concerns for the employer. Mr. Estep agreed that expense-only ICHRAs do have some issues but noted that such arrangements are not currently being used in the market.

Mr. Cohen asked whether business owners can receive ICHRA allowances. Mr. Estep replied that, generally, owners of businesses organized as "C corps" may have allowances but owners with other arrangements cannot. He added that owners of "S corps" and other structures likely have access to different tax-advantaged arrangements.

Glenn Arrington asked what restrictions are in place to limit what qualifies as a medical expense. Mr. Estep replied that any services meeting the IRS Section 213 D definition would be included.

Mr. Levine, noting that the presentation discussed what types of businesses may not be well served by ICHRAs, asked for a similar breakdown of what types of employees may be made worse off by ICHRAs. Mr. Estep replied that it is possible that individual insurance plans will not provide access to the same providers or services as group plans. Mr. Frank offered an additional hypothetical wherein an employer offers a health savings account (HSA) to employees but transitions from a traditional group plan to an

ICHRA, where plan deductibles are much higher in the individual market than in the group plan.

Next, Mr. Estep described how ICHRAs function. He explained that, once an employer elects to set up an ICHRA, they must consider design choices like whether it will reimburse for premium only or premium and expenses, whether the plan will have different employee classes, and whether allowance amounts will vary by the age of the employee. Employers must choose whether to self-administer the plan or to work with a third-party administrator (TPA) and also execute the legal documents to create the plan. Once the plan is established, employees must be onboarded or waived. Finally, employers must reimburse employees. Mr. Estep noted that most employers manage the reimbursement through payroll and cautioned that employees may not be accustomed to reimbursement arrangements for premiums that they must pay out of pocket before accessing the allowance, calling this situation a “float.” He added that some vendors are now offering “float” solutions to alleviate concerns about employees going out of pocket.

Mr. Estep concluded his presentation by sharing data from the HRA Council showing that the number of employers offering ICHRAs has nearly quintupled since 2020 and that more than 90% of ICHRA-offering businesses have 20 or fewer employees. He showed that the largest age cohort of ICHRA enrollees is 26-34 years old and that ICHRA uptake is widely distributed geographically.

Mr. Arrington, citing guidance from another source, asked for clarification as to whether employees who select their plans through an exchange such as MHC will be able to access their allowance tax-free under Section 125 rules. Mr. Estep replied that the regulation currently requires that any allowance under Section 125 must not be spent on exchange plans. He added that he believes this will be changed in the future to allow such arrangements for on-exchange plans.

Mr. Arrington cautioned that employers offering these plans will be subject to additional year-end reporting and the associated fees. Mr. Estep agreed.

Mr. Arrington expressed concern that, since brokers and TPAs traditionally work on behalf of employers, they may not be well situated to assist with employee plan selection due to staffing levels at their agencies. Mr. Estep acknowledged the challenges facing such organizations in transitioning to this model and suggested that partnering with other organizations, such as those operating call centers, may help to alleviate the burden.

Mr. Walters asked whether his understanding was correct that employees would have to submit substantiation documentation to their employer to access allowances under an ICHRA, as opposed to having access to the allowance up front. Mr. Estep replied that it depends on how the employer and any TPA they hired set up the plan. ICHRAs can be set up as a receipt-based reimbursement as Mr. Walters described or could deploy preloaded debit cards to employees or employ other such strategies.

Mr. Walters expressed concern that agents, brokers, and TPAs might find it necessary to broaden their knowledge of insurance products to include states where they don't traditionally operate on the assumption that employers with employees in multiple states may elect to set up ICHRAs. Mr. Estep explained that such concerns might be offset by partnering with other organizations with expertise in those areas.

Mr. Walters cautioned that the MHBE should proceed carefully with this potential plan since it could result in significant additional administrative burden and could threaten the viability of the small group market in Maryland altogether.

Mr. Rachesky asked how long the typical employee float lasts before being made whole. Mr. Estep replied that it varies, typically based on the employer's payroll cycle. While the technology solutions he mentioned earlier can solve the float problem, it is likely that many employers will not elect to utilize them. Mr. Rachesky expressed concern that, given that employers stop paying premiums from time to time for many reasons, employees holding the "float" may not be made whole.

Mr. Rachesky asked for details regarding the participation rate among employees whose employers offer ICHRAs and wondered whether such arrangements will make meaningful progress in enrolling the uninsured. Mr. Estep replied that he did not know the participation rates and expressed hope that ICHRAs will make progress on the uninsured rate.

Mr. Rachesky asked for employee satisfaction data regarding the ICHRAs, plan selection, and support by benefit selection assistants such as brokers. Mr. Estep replied that he did not have employee satisfaction data but agreed it would be quite useful.

Mr. Rachesky expressed concern that brokers who are already operating with limited compensation may not be willing to take on the burden of employee enrollment support. In addition, employers may be unwilling to cover that expense.

Brandon Burbage asked how the introduction of ICHRAs/QSEHRAs will affect the small group insurance market. Mr. Estep replied by citing data from the Kaiser Family Foundation showing that only roughly one third of small businesses currently offer health benefits to employees and that the vast majority of businesses that institute ICHRAs did not previously offer benefits.

Mr. Burbage asked how the growth of ICHRAs/QSEHRAs would be affected if carriers reduced or eliminated broker commissions. Mr. Estep replied that it is a valid concern, adding that carriers have been expanding in the individual market.

Johanna Fabian-Marks, Director of Policy and Plan Management at the MHBE, addressed earlier questions regarding the interaction of Section 125 and the exchange, noting that there may be workarounds such as the establishment of a mirror-exchange

for ICHRA enrollees or similar solutions. She cautioned that the Committee should not consider this issue impossible to solve.

Mr. Levine, noting that half of the uninsured are offered insurance at work, expressed concern that implementation of ICHRAs may not address the uninsured population. Mr. Frank agreed.

Mr. Cohen noted that S-corps and limited liability corporations (LLCs) are common and that it may cause businesses arranged in those ways to opt not to offer ICHRAs when the owner cannot participate. Mr. Estep replied that his experience has been that such owners typically purchase their own individual plans and access tax advantages through other means.

Mr. Arrington supported the focus on enrolling the uninsured and noted that the Maryland reinsurance program makes individual premiums very attractive. He expressed concern that enticing young, healthy people out of the small group market could jeopardize that segment.

Ms. Hailegeberel noted that, since so much time has passed in the meeting, the rest of the planned discussion will be postponed to the next meeting. She thanked Mr. Estep for his time and his expertise. Mr. Estep expressed his admiration for the forward thinking displayed by Maryland and all its market participants.

Adjournment
The meeting adjourned at 2:46 PM.

Chat Log

00:44:52.099
Johanna Fabian-Marks -MHBE-: For more information from healthcare.gov on allowed classes to distinguish employees, see the answer under "Which employees are eligible for my individual coverage HRA offer?"
https://www.healthcare.gov/small-businesses/learn-more/individual-coverage-hra/

00:45:36.609
Rob Cohen: thx

00:47:57.395
Neil Bergsman: Thank you Kyle. That was very clear and informative. I can see these tools might be attractive to a lot of nonprofit employers.

01:14:41.700
Glenn Arrington: Thank you

01:18:18.359
Glenn Arrington: The federal exchange is good for majority of states but the other 16 I think we will have to partner with or learn that market exchange as well

01:36:45.943
Makeda Hailegeberel -MHBE-: Link to Help On Demand's ICHRA webinar talks about how producers are partnering with brokers who work in the individual consumers space. https://cxhwy04.na1.hubspotlinksstarter.com/Ctc/I4+113/cxHwY04/VWWxKx60r6cZN3zr96KJNK_QW3Bmyl94R1d9LN7bK2-S3lSbNV1-WJV7CgFWLW6VlqHJ3wKzqHW7L3ptN8BP90dW6X7BgJ5d5swKW8QKJVz8MsxsKV-KNk-5lJQxYW5t6jWt1vPlN3W6xrl4y4VS36tW2H0D-l6P4pwTW8M1mHQ1DbxK3W4DP66R947hh1N5YkPmLF04ltW5gBfQg8ZFC_qW49Dysg6dw6gTN1-m_8VNHl07W4-wGgn5yRx9tW1ZczJ57_QxRKW5-s64S7fF0qVW8kxb7P4MbdrSW8HP8Nn3

01:41:41.114
Rob Cohen: I have to go. Thank you!!!!

01:42:17.923
Makeda Hailegeberel -MHBE-: thanks Rob!