



Small Business Healthcare Relief Act of 2015

Issue Background & Bill Action

Small businesses are overcome by increasing health care costs and no longer enjoy many of the tax incentives previously available to assist their employees to purchase health insurance. A recent National Federation of Independent Business (NFIB) study found nearly 62% of small business owners reported the per employee premium costs were about 14% higher in 2014, than in 2013; this growth in premium costs well exceeds any per-year increase in individual earnings wealth that may have been achieved in the absence of this additional out-of-pocket expenditure.

A September 2013 Treasury regulation 2013-54, and subsequent regulation by the Department of Labor 2013-03, prohibits employers and their employees from using tax-advantaged funding arrangements to pay any portion of premiums for employees' health insurance policies in the individual market. The policy justification for this regulation is that discrete contributions do not constitute insurance because they cannot fulfill certain requirements in the ACA – insurance policies are required to provide free preventive care and unlimited catastrophic protection. As such, under Section 4980D of the Internal Revenue Code, employers who provide tax-advantaged defined contributions for the purchase of insurance in the individual market or stand-alone health reimbursement arrangements (HRAs) would be subject to a \$100 a day penalty, or a total penalty of \$36,500 over the course of a year.

However, many small businesses – those too small to be *not required* by the employer mandate to provide coverage – may not be able to provide coverage in the small group market due to cost or complexity issues but do want to provide assistance to their employees for their health costs in the most tax-efficient manner. Many of these small businesses relied, or planned to rely, on this mechanism to provide assistance to their employees for the purchase of health insurance and qualified out-of-pocket health expenses. According to the Kaiser Family Foundation, only 45% of businesses with fewer than 10 employees provide health insurance to their employees.

Small Business Healthcare Relief Act of 2015 (SBHRA) would reduce the expense and employer time required to extend the additional employment benefit of healthcare coverage, helping make them competitive with fewer financial resources. More specifically, the bill would:

- Allow small employers to give pre-tax dollars through a Health Reimbursement Arrangement (HRA), to help employees purchase a health plan in the individual market; and
- Allow the HRA to be used to pay for qualified health expenses on a pre-tax basis.

Certainly, the provision of discrete defined contributions is not the provision of health insurance. The contributions are resources to help the individual purchase insurance of his or her choice in the individual market for policies both on and off the public exchanges and that meet all the minimum requirements under the law. Legislation is needed to permit small employers to provide these tax-advantaged arrangements to their employees and to clarify that the provision of these arrangements will not subject them to the \$36,500 penalty.