

# COMPLIANCE IN MOTION

**January 2026**

## **IRS Guidance on HSA Changes under OBBB**

On December 9, 2025, the IRS [published](#) initial guidance with a request for public comments regarding changes made to Health Savings Accounts (HSAs) under the law commonly known as the One, Big, Beautiful Bill Act (OBBB).

### **WHO THIS APPLIES TO:**

- Employers of any size allowing employees to contribute to a health savings account (HSA).



### **GO DEEPER:**

Review our [December Alert](#), *IRS Guidance on HSA Changes under OBBB* for more details, but please note the **Direct Primary Care (DPC)** portion of that alert now includes the following changes:

1. The initial alert mentioned some of the IRS Q&As were confusing on whether an employer may sponsor/pay for HSA-compatible DPC and additional IRS guidance would be welcome.
  - a. A number of law firms have since issued opinions that the guidance allows employers to sponsor or pay for DPC separately from their HDHP.
  - b. So the initial alert is changed to indicate employers may be able to sponsor or pay for DPC.
  - c. Please note, sponsoring or paying for DPC appears to still create a group health plan subject to other laws like ACA, ERISA, COBRA, etc., similar to how a separate telehealth arrangement creates a group health plan subject to those same laws.
2. A DPC exceeding the cost limits may be reimbursable from the HSA only if it still meets the primary care service restrictions.

# Changes Proposed to Medicare Part D Creditable Coverage Guidelines for 2027

The Centers for Medicare and Medicaid Services (CMS) proposed to explicitly exempt Health Reimbursement Arrangements (HRAs), including Individual Coverage HRAs (ICHRAs), from issuing Part D creditable or non-creditable notices. They also propose to increase the actuarial value threshold for prescription drug coverage to be creditable for 2027 and future years

## WHO THIS APPLIES TO:

- Employers sponsoring an HRA or ICHRA.
- Employer prescription drug plan for which creditability is not determined so a simplified determination actuarial tool must be used.



## GO DEEPER:

### HRA/ICHRA Exemption from Notice of Creditable Coverage

First, CMS proposed explicitly exempting certain account-based plans from providing the annual Notice of Creditable Coverage to Medicare Part D-eligible individuals, as well as the obligation to notify CMS each plan year of whether their prescription drug coverage is creditable or non-creditable. This exemption would apply to account-based plans that reimburse prescription drug expenses, including Flexible Spending Accounts (FSAs), Health Savings Accounts (HSAs), and Health Reimbursement Arrangements (HRAs), including Individual Coverage HRAs (ICHRAs).

While this change (if finalized) would ease administrative burdens for sponsors of these types of plans, it is important to note that it would not affect traditional group health plans, which still must continue to provide notices and report their status each year as they have since 2006.

### Revised Actuarial Value Percentage

CMS also proposed increasing the actuarial value threshold used to determine whether prescription drug coverage is creditable in 2027. The revised simplified determination method introduced for 2026 requires the plan to pay at least 72% of covered prescription drug expenses (meaning employees are expected, on average, to pay no more than 28% of covered prescription drug expenses). The proposal is to increase to 73% for 2027, and incrementally increase for 2028 and 2029, eventually settling at 75% for 2030.

Fortunately, group health plans are not required to offer prescription drug coverage that is deemed creditable. Also, most insurance carriers, third party administrators (TPAs), or pharmacy benefit managers (PBMs) determine creditability for prescription drug plans. But, in the event an employer must make their own determination, an actuarial tool is likely used, and such tools will be updated to reflect the 72% actuarial value standard for next year along with any official indexing for future years once finalized.

The important requirement for employers is to issue the correct notice of creditable or non-creditable notice and report the creditability status to CMS each year





## IRS Initial Thoughts on Trump Accounts in Preparation for Rulemaking

On December 2, 2025, the IRS published [Notice 25-68](#) with initial thoughts on Trump Accounts as they prepare to issue rules. They are requesting comments on this initial round of considerations and other items they should address as they contemplate rulemaking.

### WHO THIS APPLIES TO:

- Employers of any size interested in contributing to and/or allowing employees to make pre-tax paycheck contributions to Trump Accounts in 2026.



### GO DEEPER:

Trump Accounts are a new type of individual retirement account (IRA) for minors, subject to some unique rules. For example, the minor need not have income to allow for contributions, which is different from other IRAs that impose an income requirement to contribute.

While employers would not sponsor or open Trump Accounts for minor employees or the minor dependents of employees, there is an opportunity for employers to adopt a written §128 Trump Account Contribution Plan for the purpose of making employer contributions to Trump Accounts, and/or amending the employer's §125 cafeteria plan to allow employees to make pre-tax paycheck contributions toward Trump Accounts.

Some clarifications provided at this time include:

- Individuals will open accounts online at [trumpaccounts.gov](https://trumpaccounts.gov) or by making an election on IRS Form 4547, *Trump Account Election(s)*
- No contributions are allowed until July 4, 2026
- Employer contributions (capped at \$2,500 for 2026) are per employee, not per dependent, and count towards the annual \$5,000 contribution cap. *(as a reminder, a §128 Trump Account Contribution Plan must be in writing, and includes rules similar to the §129 rules and non-discrimination testing that apply to Dependent Care Assistance Plans (DCAPs)).*
- Employers can amend their §125 cafeteria plan to allow employees to contribute pre-tax from their paychecks to Trump Accounts of their dependent children, but employees who are minors cannot make §125 pre-tax contributions to their own Trump Account as that is a prohibited deferral of compensation. *(Allowing employees to contribute pre-tax will mean §125 non-discrimination testing will include these contributions.)*



There is still half a year until contributions are allowed to Trump Accounts. So, at this stage, employers can start deciding whether this is a benefit they want to contribute toward and/or allow employees to contribute toward pre-tax.

## 2026 Silver Plan Rates Look-up Table Published for ICHRAs to Determine Affordability

Applicable Large Employers (ALEs) sponsoring an Individual Coverage Health Reimbursement Arrangement (ICHRA) must ensure each full-time employee's offer is affordable based on the lowest-cost silver plan for the ZIP code where the employee resides or the ZIP code of the primary worksite to which they report. On December 11, 2025, the federal government [published](#) the updated table of 2026 lowest-cost silver rates for Exchange plans, so ALEs may now determine affordability.

### WHO THIS APPLIES TO:

- Employers sponsoring an ICHRA who employed on average 50 or more full-time and equivalent employees over calendar year 2025, making them an ALE for calendar year 2026. Employers under enough common ownership or control to be in a controlled group or affiliated service group must combine their employment counts.



### GO DEEPER:

#### Proposed Transparency in Coverage Rule Intends to Update Machine Readable Files

On Friday, December 19, 2025, federal regulators [announced](#) proposed [rules](#) to update the Transparency in Coverage (TiC) requirements, with a particular emphasis on machine readable files (MRFs). A [fact sheet](#) was also provided to summarize the proposed changes.

The proposed rules would update existing price transparency requirements for most group health plans and insurers to improve the standardization, accuracy, and usability of publicly available pricing data. The rules require additional contextual information be provided with the MRFs—such as product type, network name, and enrollment counts—while removing unlikely or misleading in-network pricing and refining how data is aggregated. They would also require expansion of out-of-network historical pricing data, reduce how frequently files must be updated from monthly to quarterly, and seek to make all transparency files easier to find by requiring public links and contact information. In addition, the rule would require pricing information to be available by phone, aligning these requirements with the No Surprises Act and extending certain protections and access standards to grandfathered plans as well.

It is the regulators' intention for claims payers and data scientists to review these proposed changes and provide public comment and not employers. Rather than getting involved in the details of TiC or MRF rules, employers instead should focus their efforts on securing written confirmation that the claims payer complies, as the employer is held liable if these rules are not followed properly.

Only employers with a fully insured, non-grandfathered plan who have a written agreement for the insurance company to accept all liability for the MRFs can escape liability for the carrier's MRF failures. So written agreements are vital, even if fully insured.

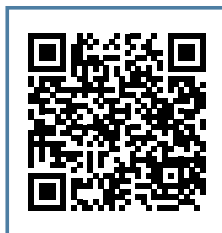
We will provide additional details once final rules are published.

## Question of the Month:

### **Is a significant cost increase to an individual's public Exchange Marketplace plan a qualifying event to move to group health coverage mid-year?**

Generally, no. If the individual is being given a renewal option for their plan, they are not experiencing a qualifying event. However, if the plan they had is not being renewed but is being canceled, forcing the person to explore other Marketplace plan options, then the individual experiences a loss of coverage qualifying event that allows them to enroll in the group health plan mid-year.

Additionally, if the employer has a calendar year plan and the employee finds out they lose Marketplace coverage after the employer's open enrollment, the election request could be honored as long as the election is submitted before the new plan year begins. The employer simply makes an exception to their internal deadline of when open enrollment elections must be submitted. It is worth ensuring the exception is not discriminatory and does not set an unreasonable precedent.



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