



VANTAGECARE RETIREMENT HEALTH SAVINGS PROGRAM

QUESTIONS AND ANSWERS FOR EMPLOYERS

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For adoption and ongoing administration questions, contact your ICMA-RC representative or Plan Sponsor Services at 800-326-7272.

ICMA-RC's VantageCare Retirement Health Savings (RHS) Program helps your employees build assets for medical expenses before they leave service on a tax-free basis. Retirees are increasingly responsible for growing medical costs, including out-of-pocket expenses associated with Medicare and employer-sponsored retiree health insurance. The RHS program enables employers and their employees to save in advance for these costs.

LEGAL BASIS AND STRUCTURE

Q1: What is the legal basis for RHS?

ICMA-RC has pioneered a new concept for offering retirement health savings to the public sector through the use of an integral part trust. The legal basis for the RHS integral part trust stems from several private letter rulings (PLRs) issued by the Internal Revenue Service (IRS) which allow non-profit organizations, including state and local government bodies, to establish "funds" which are deemed to be an "integral part" of the organization. Because the provision of welfare benefits is considered an essential function of the government, the vehicle used to fund the activity is also considered part of the governmental entity, and enjoys the entity's tax-exempt status.

ICMA-RC has crafted program documents for you to use based on a PLR obtained from the IRS for an initial adopting employer. Your use of a similar trust document will provide you with comfort that your Program is also within the IRS's requirements. A copy of the RHS PLR will be provided to you by ICMA-RC in the Adoption Booklet provided in the adoption process.

Q2: Does RHS qualify under state and local laws?

Please note that the information in this document takes into account only the federal tax rules related to ICMA-RC's VantageCare Retirement Health Savings Program. Prior to implementing an RHS Program, the employer is responsible for determining that there are no state or local laws that would prohibit it from offering the Program or any of the selected options to its employees.

Q3: Why isn't there an IRS determination letter available for RHS?

Although Voluntary Employees' Beneficiary Associations ("VEBAs") require an IRS determination letter, Integral Part Trusts are not required to follow this procedure. There is also no procedure available for determination letters for Health Reimbursement Arrangements ("HRA"). ICMA-RC has

obtained a Private Letter Ruling (PLR) on the underlying funding vehicle.

Q4: What are the requirements for qualifying as an "integral part" of a governmental employer?

In order for a trust to qualify as an "integral part" of the employer, the employer must exert "substantial control" directing the plan and must have "substantial financial involvement".

"Substantial control" simply means that the employer controls the integral part entity by holding the power to amend or terminate it, and by naming the parties that manage the daily operations of the entity. These parties include trustees appointed by the employer to hold title to trust assets on behalf of the employer. The trustees can be named solely by the employer, named in conjunction with the employee group(s) covered by the Trust, or can be a directed trustee hired by the employer. ICMA-RC's model trust agreement gives the employer the authority to amend or terminate the trust and to name the trustees. Thus, the requisite level of control is automatically present.

"Substantial financial involvement" means that the employer has the primary responsibility for funding the trust. The IRS considers direct employer contributions, mandatory contributions of accumulated unused leave and mandatory contributions from compensation to be "employer" contributions for this purpose.

Q5: Is RHS a Health Reimbursement Arrangement?

The IRS issued guidance regarding "health reimbursement arrangements" or "HRAs" in 2002, 2005, and 2006.

ICMA-RC administers RHS as an HRA and the program is fully compliant with the most recent HRA guidelines:

- Contributions qualify as employer contributions;
- Assets are available only for health expenses;
- Unused assets carry forward to subsequent years;
- The plan reimburses only the participant, spouse, and dependents.

ESTABLISHING AN RHS PLAN – PLAN DESIGN, ADOPTION, AND IMPLEMENTATION

Q6: What is the adoption procedure for establishing an RHS Program?

1. The employer first talks to an ICMA-RC Retirement Plans Specialist and reviews the benefits and features of the RHS Program and how they may apply to the employer's current needs and capabilities.
2. The employer notifies the ICMA-RC Retirement Plans Specialist when ready to proceed with adoption.
3. ICMA-RC supplies the employer with the *VantageCare RHS Adoption Booklet*. This booklet contains all materials necessary to adopt the plan.
4. Employer returns completed documents to ICMA-RC.
5. ICMA-RC notifies the employer when the RHS program is established.
6. The employer holds enrollment meeting(s) and submits employee enrollment information via EZLink. For EZLink assistance contact ICMA-RC at 800-326-7272.
7. The employer begins to transmit data and contributions to ICMA-RC via EZLink.

Q7: What documents govern the RHS Program?

The provisions of an employer's RHS Program are governed by three documents which are provided by ICMA-RC as part of the adoption process.

VantageCare RHS Plan Adoption Agreement: specifies the details of the employer's RHS Program, including employee eligibility requirements, sources of contributions, the level of contributions, vesting provisions (if any), the types of medical benefits that will be funded by the RHS trust, and procedures to be followed in case of the death of the employee.

The sample Declaration of Integral Part Trust: the legal entity ("integral part trust") that holds the assets set aside to pay for employees' retirement health benefits. ICMA-RC provides a sample trust agreement that has already received approval by the IRS for another employer for the basic plan concepts. Alternatively, this document may be drafted by you in conjunction with your human resources or benefits counsel. However, if you develop your own Trust agreement, it must be reviewed by ICMA-RC prior to adoption to ensure compliance with integral part trust rules and conformity with ICMA-RC's administration of the RHS program.

The sample Retiree Welfare Benefits Plan: A written document should be in place in order to offer any tax-advantaged welfare benefit plan, and you may have one in place already. This document(s) identifies the underlying benefits available to the employee/retiree such as medical, dental and long-term care coverage. ICMA-RC provides a sample welfare benefits plan that can be executed if an appropriate plan is not already in place.



You may want to review all RHS documents with your own counsel prior to adoption.

Q8: What plan design features are available?

The RHS Program has been designed to both (1) allow the employer flexibility in establishing its Plan to best meet the needs of its employees and (2) minimize the administrative effort by the employer. In completing the RHS Plan Adoption Agreement, the employer may make choices regarding the following features.

1. **Employee groups:** The employer can determine which groups of employees will be included in the RHS Plan (e.g. all employees, full-time employees, or a specific unit of collectively-bargained employees). A separate plan should be adopted for each group if features requiring varied administration by ICMA-RC are selected for different groups (e.g. different vesting schedules).
2. **Employee plan eligibility criteria:** The employer can establish a minimum age and/or period of service for participation. Employee participation in the Plan is mandatory.
3. **Contributions:** The employer can determine the funding types and levels (e.g., direct employer contributions and/or mandatory employee contributions).
4. **Vesting:** The employer may establish a vesting schedule for direct employer contributions if desired. (All employee contributions are automatically fully vested.)
5. **Forfeitures:** The employer determines how forfeited funds will be used when an employee separates from service prior to becoming fully vested, or in the case that assets must revert to the trust after the participant's or survivor's death.
6. **Benefit eligibility:** The employer determines when participants will become eligible to use their RHS assets for medical benefits (e.g., at retirement).

7. **Permissible medical benefits:** The employer can choose the types of medical expenses that will be reimbursed by the RHS Program in accordance with IRS guidance.

Q9: How do your employees get started?

1. The employer announces the RHS Program to employees, notifies them of their eligibility to participate, and informs them of the Plan provisions as selected in the Adoption Agreement. ICMA-RC will provide a customizable summary which may be used for this purpose. ICMA-RC also provides enrollment kits containing forms and necessary information.
2. The employee completes the enrollment form and returns it to the employer. The enrollment form includes participant indicative data (e.g., name and address) and survivor information.
3. Once the employer receives the completed enrollment form, the employer verifies the participant's eligibility to participate, and transmits the participant data to ICMA-RC via EZLink. The employer retains the enrollment forms. If there are employee contributions, the enrollment forms may be used to establish payroll processing.
4. ICMA-RC sets up the participant's account that day, if the enrollment information is received prior to 4:00 p.m. Eastern Time.
5. ICMA-RC sends the participant a welcome letter the business day following the establishment of the new account.
6. The participant can make changes to the account, including investment allocation, through Account Access, or by speaking to an ICMA-RC Investor Services associate.
7. If any employees are eligible for benefits upon enrollment, the employer should notify ICMA-RC of their benefit eligibility through EZLink when the employee is enrolled. The employee should also complete a *VantageCare RHS Benefit Eligibility Form*.

CONTRIBUTIONS

Q10: What types of contributions can be made to the RHS Plan?

All contributions must be specified in the Adoption Agreement. These contributions may be any or all of the following:

- **Direct employer contributions**

Direct employer contributions can be either a flat dollar amount or a percentage of earnings for each participating employee. Alternatively, the employer's plan may provide for a discretionary contribution, to be determined each year.

No FICA (Social Security and Medicare) or income tax applies to the contributed funds, and, if used for participant, spouse or dependent medical expenses, no FICA or income tax will be due at distribution.

The RHS Program default is immediate 100% vesting for direct employer contributions, but, when desired, the employer can establish a vesting schedule. See the *Retiree Health Program Employer Manual* (Employer Manual) available on EZLink for step-by-step instructions on forfeiting non-vested assets.

- **Mandatory unused leave contributions***

The RHS Plan can also provide for contributions of unused sick, vacation and other types of leave. No FICA or income tax applies to the contributed funds and, if used for participant, spouse or dependent medical expenses, no FICA or income tax will be due at distribution.

These mandatory unused leave contributions are required by the employer's plan — employees may not choose whether or not to make these contributions. The contribution formula may provide for annual contributions or balloon contributions at the time of retirement. The employer can establish an unused leave contribution formula that best fits the needs of its covered employees. Contributions of unused leave are always 100% vested.

- **Mandatory pre-tax contributions of compensation***

A plan may require individuals to contribute a certain portion of their salary. For example, the employer might grant a salary increase of which part is paid to the individual and the other portion directed to RHS for all covered employees. Alternatively, the employer might mandate that all or a portion of an incentive payment be contributed to the RHS Plan.

Employees may not choose whether or not to make these contributions; they are required by the employer's plan. Mandatory pre-tax contributions are always 100% vested. As with mandatory unused leave contributions, neither the employer nor the employee will pay FICA or income tax on the contributed funds, and, if used for participant, spouse or dependent medical expenses, no FICA or income tax will be due at distribution.

Refer to the Employer Manual for more information on non-discrimination rules.



* These contributions are treated as employer contributions by the IRS and not subject to FICA or income tax. Since they are considered employer contributions by the IRS, these contributions satisfy the requirement for "substantial financial involvement" as required by the integral part trust rules (see Q4). However, ICMA-RC will recordkeep the contributions separately in employer (subject to vesting) and employee pre-tax (mandatory leave and mandatory pre-tax) sources.

Q11: How are RHS contributions reported on the employee's Form W-2?

Because direct employer and pre-tax employee contributions are not taxable wages and are not subject to FICA taxation, these contributions are not reportable at all on Form W-2. (The employer may report these contributions for information purposes in Box 14 "Other", if desired.)

Refer to the Employer Manual for more information on non-discrimination rules.

Q12: What are some examples of contributions allowed by employers?

Employer #1 has chosen to provide all of the following types of contributions for employees on a mandatory basis:

- Flat dollar contribution for all employees in the amount

of \$350 to a reimbursement account covering all medical expenses;

- 1% of each full-time employee's salary above \$35,000 as a direct employer contribution to an account that reimburses only for insurance premium reimbursement in order to eliminate any potential for nondiscrimination issues (refer to the Employer Manual for more information on non-discrimination rules);
- 10% of an employee's accumulated sick leave at the time an employee leaves service with the employer, if the employee has at least 10 years of service with the City.

Employer #2 contributes \$1,300 per employee per year. In addition, at retirement, the dollar equivalent of accrued vacation and sick leave up to \$40,000 per retiree is contributed on a mandatory basis.

Employer #3 contributes on a mandatory basis:

- Annual unused sick leave as prescribed in the existing employee contract;
- One-time bonuses and awards;
- Annual unused vacation accruals exceeding 320 hours;
- Annual unused administrative leave, not to exceed 64 hours;
- All unused sick leave not to exceed 500 hours upon retirement or other separation of service;
- All unused administrative leave and vacation accrual on retirement or separation.

Employer #4 contributes direct employer contributions equal to 3% of compensation per employee, plus additional 1% of compensation for employees contributing annual leave of 16 hours per year. An employee who has accrued 40 or more hours of unused annual leave must contribute on a mandatory basis all such leave over 40 hours to a maximum of 16 hours per year.

Employer #5 may make a discretionary direct employer contribution; the level of the contribution will be determined each year by the governing board. In some years, no employer contribution will be made.

Other employers use age, years of service and date of hire as part of the formulas that determine contributions.

Q13: Are there limits to the amount of contributions that may be made in a given year?

There are no percentage or dollar limitations on the amount of contributions to RHS made on a tax-advantaged basis to RHS.

Q14: How are the contributions coordinated with Section 457 and 401 plans?

Contributions to RHS are not coordinated with and do not offset contributions that may be made to Section 457 and 401 plans. However, there may be an indirect impact relative to mandatory pre-tax contributions. Since these contributions reduce “gross compensation” for Form W-2 purposes, they may lower the base on which the contributions to a 457 or 401 plan are calculated, depending upon the terms of the 457 or 401 plan. ICMA-RC’s model 457 and 401 plan documents include RHS contributions as compensation for retirement plan contribution calculations.*

** Note that RHS contributions will not be counted as compensation for purposes of the statutory limits on 457 and 401 plan contributions.*

Q15: Are contributions made to the account included in “pensionable” compensation?

The definition of compensation covered by the employer’s pension will need to be examined to determine whether any of the RHS contribution types are considered part of compensation on which pension benefit calculations are made. The employer should contact the pension plan provider to determine proper treatment.

Q16: When does the employer make contributions?

The employer can elect to send contributions to ICMA-RC at any interval (e.g., weekly, bi-weekly, monthly, quarterly, annually, at retirement or at some other prearranged date). The employer can remit the contributions via check or electronic funds transfer (EFT).

PLAN INVESTMENTS

Q17: Where will RHS assets be invested?

The investment funds available to RHS participants include actively managed funds, target-risk funds, index funds, stable value and target-date funds.

Upon initial enrollment in the RHS Program, a participant’s investment allocation is automatically established as an age-based, target-date fund or another default fund selected by the employer. The participant may subsequently change the investment allocation for future contributions or existing balances at any time through Account Access (www.icmarc.org/login), or an ICMA-RC Investor Services Representative.

MEDICAL BENEFITS AND PLAN DISTRIBUTIONS

Q18: How is benefit eligibility determined and established?

The employer determines the benefit eligibility criteria for participating employees via the Adoption Agreement. The RHS Program has been designed to allow the employer the flexibility to choose the benefit eligibility criteria that best meets the needs of its employee group. For example, the employer might select separation from service or “retirement”* as the appropriate time for benefit eligibility. Alternatively, a combination of separation from service and a specific age could be chosen.

** If the employer selects “retirement” as the primary eligibility criteria, a secondary criteria (e.g. separation from service and age 55) must also be provided for. Employees that separate from service prior to “retirement” will become eligible for benefits under the secondary criteria.*

There are two steps that must be taken when an employee becomes eligible for medical benefits. Benefit payments cannot be processed until both steps are completed.

- The employer must notify ICMA-RC via EZLink when an employee becomes eligible under the employer’s chosen criteria. For assistance, see instructions in the Employer Manual available through EZLink or contact an EZLink Specialist at 800-326-7272.
- The employee must complete and send the *VantageCare RHS Plan Employee Benefit Eligibility Form* to the third-party claims administrator. This form provides information on the spouse and eligible dependents.

The employee will then be able to submit reimbursement requests directly to the third-party claims administrator on the *VantageCare RHS Plan Benefits Reimbursement Request Form*, available through the employer or ICMA-RC. Medical expenses incurred before the participant is eligible for RHS benefits will not be reimbursed.

Q19: What medical benefits can be provided to participating employees?

When adopting the RHS Plan, the employer chooses the medical expenses that may be reimbursed to participating employees. The employer may offer reimbursement for all medical expenses eligible under IRC Section 213 other than (i) direct long-term care expenses, and (ii) expenses for medicines or drugs which are not prescribed drugs (other than insulin).*



* Direct long-term care expenses are defined as amounts paid for long-term care (of a custodial rather than medical nature) other than through a long-term care insurance policy. Qualified long-term care insurance premiums are allowable expenses under the RHS plan to the extent they are deductible for federal income tax purposes.

Alternatively, the employer may choose specific medical expenses that may be reimbursed. For example, reimbursements may be made available only for health insurance premiums, COBRA premiums, Medicare supplemental insurance premiums, dental insurance premiums, qualified long-term care insurance, etc. The employer may allow reimbursement for only one type of expense, or for any combination of qualifying medical costs.

Information about what constitutes a qualifying medical expense can be found in IRS Publication 502, Medical and Dental Expenses, available on the IRS website at www.irs.gov. Generally, the expenses permitted are all expenses “paid for diagnosis, cure, mitigation, treatment, or prevention of disease, and for treatments affecting any part or function of the body” other than direct long-term care expenses. Insurance premiums covering these expenses are also permissible, as are expenses for certain over-the-counter medications. Cosmetic surgery and expenses that may be merely beneficial (such as vacations) are not permissible.

Q20: Are there any emergency withdrawal provisions?

Unlike Section 457 plans, there are no provisions for withdrawals in the event of a financial hardship. However, an RHS participant that is otherwise eligible for medical expense reimbursement will be able to use RHS assets in the event of a medical emergency or hardship.

Q21: What happens when a participant leaves the employer prior to benefit eligibility?

When an employee separates from service prior to attaining benefit eligibility, the account will remain invested as directed by the participant. The participant may transfer the assets among the available investment options at any time through Account Access or an ICMA-RC Investor Services representative.

When the participant attains benefit eligibility under the terms of the employer’s RHS Plan, he or she may begin using the account for tax-free reimbursement or medical expenses.

Q22: What happens to the account balance when the participant dies?

An important feature of the RHS Program is that it provides for continuing benefits for survivors of deceased participants.

- **Surviving spouse and/or dependent(s):** Upon the participant's death, remaining assets will be transferred to an account for continuing tax-free use by the surviving spouse and/or dependents for their own qualifying health expenses. If there are assets remaining upon the death of the spouse and all dependents, they will remain in the RHS trust to be used as a “forfeiture” in the employer's RHS Program.
- **No surviving spouse or dependent(s):** If the participant is not survived by a spouse or dependents, any remaining assets will revert to the RHS trust to be used as a “forfeiture” in the employer's RHS Program.

MEDICAL EXPENSE REIMBURSEMENTS

Q23: Who will pay medical benefit claims?

The participant (or his/her survivor) will make the initial payment for medical expenses that are paid directly to the service or insurance provider. The employer may also make the initial payment for insurance premiums.

Reimbursement for eligible benefits (whether direct expenses or insurance premiums) will be handled by a third-party administrator (TPA) hired by ICMA-RC. The TPA will reimburse the participant or employer on receipt of completed benefit reimbursement forms. An exception to this procedure exists for situations where the participant has recurring expenses (e.g. insurance payments). In this case, reimbursement can be made on an automatic payment basis to the participant after the appropriately completed request is filed with the TPA.

In situations where the employer pays insurance premiums on behalf of the participants, the employer may request reimbursement directly from the TPA by using the appropriate form. An automatic reimbursement can be established for recurring premium payments.

Q24: Who is the third-party claims administrator?

Meritain Health, Inc., is a third-party claims administrator hired by ICMA-RC to perform administrative services for the RHS program as directed by ICMA-RC. Meritain Health is the country’s largest provider of services for self-funded health plans. Meritain Health serves over 1,500 self-funded clients, and is familiar with the workings of ICMA-RC’s RHS Program.

All questions regarding claims should be directed to Meritain Health at 888-587-9441. Meritain’s claims representatives are available from 8:00 a.m. to 5:00 p.m. Eastern Time.

Q25: Is the third-party claims administrator HIPAA compliant?

The third-party claims processor utilized by ICMA-RC for the RHS program, has instituted procedures to comply with Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) requirements. At the request of employers, ICMA-RC will sign HIPAA “business associate” agreements after legal review of the agreement.

Q26: What is the procedure for reimbursement? How long does it take?

When a participant becomes benefit-eligible, the employer notifies ICMA-RC and the participant notifies the third-party claims administrator. The participant may then submit medical claims for reimbursement on the *VantageCare RHS Plan Benefits Reimbursement Request Form*. The claim is reviewed to ascertain that the individual is benefit-eligible, that the claim is covered by the participant’s RHS balance, and that the expense is covered by the employer’s plan. If these conditions are met, the claim is processed and paid. All claims will be paid, suspended, or denied in writing within 30 days. Most claims are paid within 10 days. If claims are denied, there is an appeal process, which ends with a final

determination on any denied claim by the employer. The Employer Manual includes a detailed description of the appeal process.

TAXES

Q27: How are payments from RHS accounts treated for tax purposes?

RHS benefits paid in the form of medical expense reimbursements will not be taxed to the participant, his or her spouse, or dependents (whether paid before or after the death of the participant). No income tax withholding or reporting is required, and the benefits need not be reported at all by the recipient on his or her income tax return.

SAME-SEX MARRIAGES

Federal law recognizes same-sex marriages and VantageCare Retirement Health Savings (RHS) Programs must provide same-sex spouses with the same rights as spouses of the opposite sex including with respect to the following:

- **Eligible Expenses** – Participants may request RHS plan assets for reimbursement of qualifying medical expenses attributable to their spouses.
- **Survivor Benefits** – In the event of a participant’s death, his or her spouse is entitled to receive any remaining benefits from the RHS plan account.

Type of RHS Benefit	Income Taxes			FICA	Tax Reporting by
	Is the Benefit Income Taxable?	Is Federal Income Tax Withheld?	Is State/Local Income Tax Withheld?	Is OASDI/HI* Withheld if Applicable?	
Medical benefits paid to employee	No	No	No	No	N/A
Medical benefits paid to spouse/dependents	No	No	No	No	N/A
Payments deemed taxable under non-discrimination rules	Yes - to participant	No	No	No	Employer

*OASDI = Social Security and HI = Medicare

Q28: What is the employer's responsibility with respect to tax reporting and remittance?

The responsibilities of the employer relative to FICA taxes and federal and state income taxes are outlined in the Employer Manual.

Employers are responsible for income tax reporting of payments deemed taxable under the welfare plan nondiscrimination rules. Refer to the Employer Manual for more information on non-discrimination rules. These payments are reported on Form W-2.

FEES

Q29: Does ICMA-RC charge a fee for the RHS Program?

ICMA-RC does not charge employer-level fees for RHS.

An annual fee of \$25 will be charged to participant accounts (\$6.25 per quarter). If your plan offers certain mutual funds, ICMA-RC may also assess an asset-based fee. All RHS Program fees will be reflected on participant quarterly statements, which contain complete and up-to-date fee information.

Note: Always refer to your plan's Administrative Services Agreement and fund disclosure materials for fee information.

RHS fees are subject to change with appropriate prior notification.

ADMINISTRATION

Q30: What information will I receive to assist in ongoing plan administration?

Once your RHS Program is established, the *Retiree Health Program Employer Manual* will be available on line through EZLink, the required portal for submission of enrollment, contribution, termination and eligibility information to ICMA-RC. This document is invaluable in detailing all the administrative procedures involved in maintaining an RHS plan, including notifying us of a participant's benefit eligibility and non-discrimination testing (if applicable). You may download and print this manual if desired.

ICMA-RC can also help employers prefund retiree health care liabilities through the VantageCare Employer Investment Program. To learn more, visit www.icmarc.org/eip or contact your ICMA-RC representative or Plan Sponsor Services at 800-326-7272.



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