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ICHRA Guide

Updated April 2024

Imagine a world where offering health insurance was easy and affordable for employers of all sizes. **It** is **possible with an ICHRA.** An Individual Coverage Health Reimbursement Arrangement (ICHRA) is an employer-provided group health benefit based on a predetermined contribution that gives individuals choice and employers flexibility.

By offering an ICHRA, employers can now build a health benefits package around a set dollar amount. Employees then have the freedom to select a policy in their rating area that best fits their unique needs.

For many businesses, an ICHRA can provide a welcome alternative to traditional group health benefits, representing a big shift in the way health insurance is delivered. Effective January 1, 2020, employers of all sizes may offer ICHRAs to their employees.

Greater Cost Control

Employers can confidently set their health plan budgets year after year by defining a monthly predetermined contribution for each eligible employee.

Freedom of Choice

The doors are wide open for employees to shop the individual insurance marketplace to find and purchase the coverage that best fits their needs.

Easy Administration

Leveraging an ICHRA-specific benefits technology solution can eliminate recurring tasks and simplify the benefits management process.

2010

Affordable Care Act

Comprehensive healthcare reform designed to extend healthcare to millions.

2013

Affordable Care Act Notice 2013–54

Interpretation issued preventing businesses from offering HRAs that integrated with individual health insurance.

2016

21st Century Cures Act

Creation of Qualified Small Employer Health Reimbursement Arrangement.

2019

Regulations Finalized

Expanded usability of HRAs approved.

2020

ICHRA Established

Effective plan years beginning in January 2020.

Understanding ICHRAs

An ICHRA is an employer-funded, tax-free health benefit used to reimburse employees for individual health insurance premiums and other qualified medical expenses. With an ICHRA, the choice and responsibility shift from employer to employee—the employer determines where and how to spend the employer's predetermined contributions.

ICHRAs are centered on a reimbursement model (sometimes referred to as a defined contribution approach), which gives employers greater cost control and predictability and employees more coverage options to choose from. This is very different from the traditional group insurance market model (sometimes referred to as a defined benefit approach), where employers select a one-size-fits-most group plan and employees are limited to options selected by the employer.

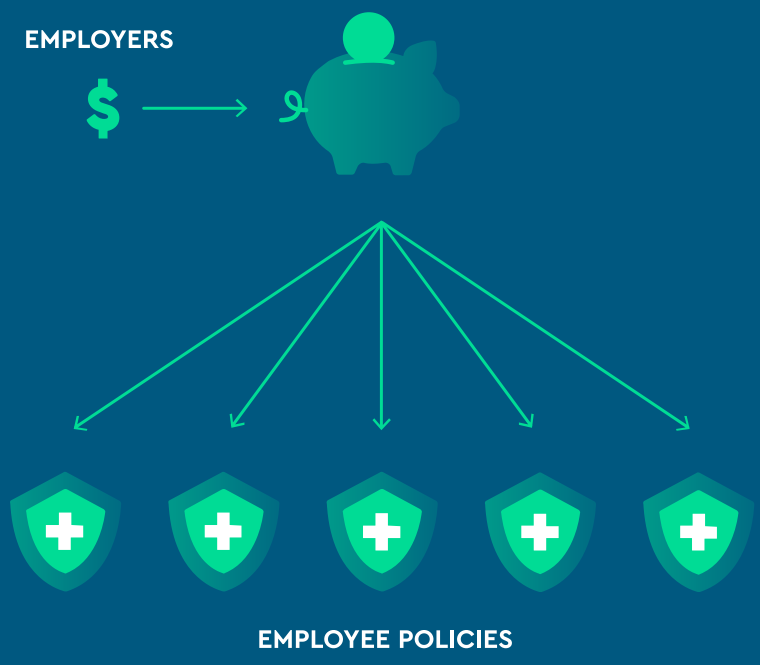
By offering an ICHRA:

- Employers define contribution limits and have more flexibility in plan design that will better fit the unique needs of their employees. The employer establishes the reimbursement allowance per employee class.
- Employees shop, select, and purchase an individual health insurance policy from the marketplace that works best for them. Employees provide proof of coverage, and the employer reimburses them up to the predetermined contribution allowance. Anything due above and beyond the contribution amount, the remainder, is the employee's responsibility.

What are the main differences between an ICHRA and a traditional HRA?

1. An ICHRA can reimburse individual medical insurance premiums, while most traditional HRAs cannot.

2. Most traditional HRAs must be "integrated" with a separate group health plan, whereas an ICHRA works with individual insurance policies.



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Benefits

Employers

- **Eliminates the guesswork** of which plans will meet the needs of all (or most) employees by opening the door to the individual insurance marketplace.
- **Enables cost predictability by giving the employer complete control** over the contribution amounts to all employees within a class.
- **Allows businesses to focus on what they do best**—serve their customers—instead of navigating the complex world of health benefit design and administration.
- **Removes some of the burdens** of managing a health plan and underlying health risks off of the employer.
- **Reduces the administrative stress** of handling renewals—plus, there are no participation minimums.
- **Amounts not used by the employee** are forfeited and may be available to pay plan expenses.

Employees

- **Presents more options, therefore more freedom**, to shop and purchase individual coverage that better suits their needs.
- **Provides tax advantages** because the employer's reimbursements do not count toward the employees' taxable wages.
- **Provides coverage portability;** employees may take the insurance policy with them if they leave the company.

Considerations

An ICHRA is a group health plan. It is subject to many of the same general legal requirements as a traditional group health plan. The ICHRA must comply with all of the general Employee Retirement Income Security Act (ERISA) requirements applicable to traditional group health plans, including:

- Reporting requirements (e.g., Form 5500, Forms 1094/1095, PCORI)
- Disclosure requirements (e.g., distributing Summary of Benefits and Coverage, Summary Plan Descriptions, and Summaries of Material Modification)
- Written plan document
- Requirements regarding claims and appeals procedures (unless a specific exemption applies)

An employer adopting an ICHRA, as the ERISA plan administrator, is responsible for ensuring the ERISA requirements are satisfied and will have ERISA fiduciary duties with respect to the operation of the ICHRA. Furthermore, ICHRAs are generally subject to other laws that apply to group health plans, such as COBRA and HIPAA.

In most cases, ERISA and the other laws apply only to the ICHRA itself; the individual health insurance policies purchased through the ICHRA are not considered to be a group health plan for purposes of these rules. Rather, the premium for the individual health insurance policy is an expense reimbursable through the ICHRA.

Setting up an ICHRA

NOTE

Under Nexben's ICHRA, for ICHRAs established for a short plan year (a start date other than Jan. 1), all subsequent ICHRA plan years will follow the calendar year.

ICHRA Employee Classes

ONLY THE FOLLOWING CLASSES ARE RECOGNIZED:

- Full-time employees
- Part-time employees
- Seasonal employees
- Salaried employees
- Non-salaried employees (such as hourly)
- Employees covered by a particular collective bargaining arrangement (different bargaining units can be separate classes)
- Employees who have not satisfied a waiting period
- Temporary employees of staffing firms
- Non-resident aliens with no U.S.-based income
- Employees working in the same individual policy insurance rating area (i.e., the same geographic location such as state or multi-state region)
- Any combination of two or more of the above

Step
1

Pick a Start Date

Many employers think about benefits on a calendar year basis, aligning the ICHRA start date with Open Enrollment on the marketplace.

An ICHRA may also be started at any other time of the year. Once you pick a date, it will trigger a Special Enrollment Period allowing employees to purchase coverage on the individual market outside of the Open Enrollment Period.

If an employer terminates an existing group health insurance plan, the ICHRA start date should be carefully coordinated to avoid gaps in coverage.

Step
2

Design Employee Eligibility by Class

Flexibility in designing the program to better fit the needs of employees is one of the most valuable features of an ICHRA. Employers can choose to structure the eligibility and contribution criteria based on 11 employee classes defined by the ICHRA regulations. Employers can decide to offer an ICHRA to all employees or only to certain classes of employees. However, the same terms must apply to all individuals within a class of employees.

There are a few rules to prevent discrimination, and misuse, including:

- Employers must offer the same amount of reimbursement to all employees in a class, although amounts can be increased for workers who are older or have dependents.
- Employers cannot offer an ICHRA to an employee to whom the employer also offers a traditional group health plan. However, an ICHRA may be offered to one class, such as part-time workers, and a traditional group health plan to another, such as full-time employers.

Eligibility by Class (cont.)

Should an employer offer a traditional group health plan to a class of employees and an ICHRA to another class, the ICHRA class size guidelines must be followed if the employer uses any of the following classes:

- Full-time employees
- Part-time employees
- Salaried employees
- Non-salaried employees
- Employees working in the same rating area

In these cases, the ICHRA class must be larger than:

- Ten employees, for an employer with <100 employees.
- 10% of the total number of employees, for an employer with 100–200 employees.
- Twenty employees, for an employer with >200 employees.

Also, through a new hire rule, employers can offer new employees an ICHRA while grandfathering existing employees under a traditional group health plan.

Step

3

Determine Budget and Set Contribution Allowance

The next step for the employer is to determine the annual budget and how much it will provide employees on a monthly basis for reimbursement, which represents the maximum amount for which the employees can be reimbursed through the ICHRA.

Keep in mind:

- There are no minimum or maximum contribution allowance requirements.
- Different contribution allowances may be offered to different employee classes.
- Within a class, different contribution allowances may be offered to an employee based on age and family size.

In addition, employers can choose what is reimbursable under the ICHRA:

- Insurance premiums only (**Nexben's ICHRA solution only supports this option**).
- Insurance premiums and qualified medical expenses.[1]
- Qualified medical expenses only.[2]

CONTRIBUTION ALLOWANCE EXAMPLES

Provide same to all employees	$300/mo.
Vary by Full-time/ Part-time workers	$300/mo. FT $100/mo. PT
Vary by employee age[3]	$100/mo. 18–59 $300/mo. 60+

[1] Qualified medical expenses are defined by the IRS in publication 502.

[2] Must still have individual health insurance coverage.

[3] Individual market plans for older people typically cost more, so employers may elect to offer higher contribution allowances to older employees. Contribution allowances must be structured using a 1:3 ratio from the youngest to the oldest employee. Age-banded rates, through the marketplace use a 1:3 ratio.

TWO PROVISIONS OF THE AFFORDABLE CARE ACT APPLY ONLY TO ALEs:

- The employer shared responsibility provisions; and
- The employer information reporting provisions for offers of minimum essential coverage.

NOTE

Affordability is a key term for two separate purposes:

- A group health plan
- The marketplace

Affordability Calculation of the ICHRA

The Affordable Care Act (ACA) generally requires Applicable Large Employers (ALEs) employers – those with 50 or more full-time equivalent employees – to offer comprehensive health coverage to their full-time employees (30 hours per week) and dependent children known as the "employer mandate." Employers may be subject to steep penalties (i.e., shared responsibility payments) for failing to offer health coverage to substantially all of their full-time employees or for not offering full-time employees coverage that is affordable and provides a certain minimum level of coverage.

APPLICABLE LARGE EMPLOYER DEFINITION

Whether an employer is an ALE is determined each calendar year and generally depends on the average size of an employer's workforce during the prior year.

- If an employer has fewer than 50 full-time employees, including full-time equivalent employees, on average during the prior year, the employer is not an ALE for the current calendar year. Therefore, the employer is not subject to the employer-shared responsibility provisions or information reporting provisions for the current year.
- If an employer has at least 50 full-time employees, including full-time equivalent employees, on average during the prior year, the employer is an ALE for the current calendar year and is therefore subject to the employer shared responsibility provisions and the employer information reporting provisions.

To determine its workforce size for a year, an employer adds its total number of full-time employees for each month of the prior calendar year to the total number of full-time equivalent employees for each calendar month of the prior calendar year and divides that total number by 12. Further details can be found here: https://www.irs.gov/affordable-care-act/employers/determining-if-an-employer-is-an-applicable-large-employer.

An ICHRA can help ALEs satisfy the employer mandate:

- First, by offering an ICHRA to substantially all (generally 95%) of its full-time employees, the employer can avoid the larger of the two employer mandate penalties.
- Furthermore, if the ICHRA offered by an employer to substantially all full-time employees is "affordable," then the employer can also avoid the second type of employer mandate penalty. If the ICHRA is deemed unaffordable, the employer may be subject to the second type of employer mandate penalty.

A formula is used to determine whether an employer-sponsored group health plan, including an ICHRA, provides coverage on an affordable basis. The formula is different from the way the marketplace determines affordability for purposes of subsidies.

ICHRA AFFORDABILITY EXAMPLES

Mary

W-2 Wages	$50,000
Lowest Cost Silver Plan	$600

Affordability Calculation

($50,000 / 12) X .0912 = $380

$600 – $380 = $220

The lowest allowance that can be considered affordable for Mary is $220. The employer contribution allowance must be ≥$220/mo. to be considered affordable. The employer's contribution is set at $350/mo., which is above the affordability limit. Mary must pay any difference for the coverage she selects.

Jack

W-2 Wages	$35,000
Lowest Cost Silver Plan	$650

Affordability Calculation

($35,000 / 12) X .0912 = $266

$650 – $266 = $384

The lowest allowance that can be considered affordable for Jack is $384. The company's contribution allowance of $350/mo. is below the affordability limit. Jack can opt out of the ICHRA, go to the marketplace to see if he qualifies for a subsidy. If he qualifies, he can choose not to participate in the ICHRA and instead get subsidized coverage through the marketplace.

Because the employer did not provide affordable coverage, the employer will have to pay a penalty.

Affordability (cont.)

An ICHRA is considered "affordable" for an employee if the monthly premium for the lowest-cost silver plan for self-coverage only (available through the marketplace in the employee's area of residence), minus the monthly amount made available to the employee under the ICHRA (not including any increased amount made available under the ICHRA based on the number of covered dependents), is less than 9.12% of 1/12 of the employee's annual household income. The percentage rate applies in 2023 and is indexed yearly.

PRIMARY SITE OF EMPLOYMENT

Instead of using the employee's residence, an employer may use the Location Safe Harbor to determine the employee's primary site of employment to identify the lowest-cost silver plan.

- For employees that have a primary work site to which they are assigned and where they are expected to perform services, that primary work site can be used as the location.
- For remote workers that have a work site available or at which they are expected to perform work, that location is used.
- For remote workers that do not have a work site available or at which they are expected to perform work, the worker's residence is used.

For purposes of the calculation described above, an employer chooses one of three safe harbors to determine annual household income (e.g., the W-2 safe harbor, the rate of pay safe harbor, or the federal poverty line safe harbor) for purposes of affordability under the employer shared responsibility provisions.

These safe harbors are not used by the marketplace to determine affordability for subsidies. The marketplace looks at the individual's household income.

Step

4

Provide Legal Plan Documents

The Internal Revenue Code and ERISA (if applicable) require employers to establish a formal written plan document. In addition, ERISA requires the presentation and distribution of a Summary Plan Description (SPD).

These legal documents cover a significant amount of information and must include the terms and conditions of the ICHRA, including monthly reimbursement amounts, class structures, claims processes, reimbursement eligibility, and federally required information on HIPAA (if applicable) and other procedures involving privacy.

There are potentially significant adverse consequences if an employer fails to adopt a written plan document or, if subject to ERISA, to present and distribute an SPD.

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POLICY PREMIUMS EXCEEDING EMPLOYER CONTRIBUTION

An employee may select an individual health insurance policy that costs more than the employer's monthly contribution allowance. The amount of premium over the employer contribution (the "remainder") is the employee's responsibility.

An employer may allow pre-tax payment of this remainder by amending the employer's existing cafeteria plan or may establish a stand-alone cafeteria plan that specifically addresses the remainder. Alternatively, the employer may make arrangements with the employee to pay for the remainder on an after-tax basis (e.g., through after-tax payroll deduction). Pre- or post-tax payroll deduction of the remainder also depends on where the individual policy is purchased (see page 10).

NOTE

In most cases, employers are required to provide a 90-day notice before the ICHRA's start date. The notice must include key information about the ICHRA and information regarding employee eligibility for the benefit.

NOTE

HOWEVER, because the employer uses a safe harbor to determine affordability for purposes of the second shared responsibility penalty, the employer is not subject to penalties even if the marketplace determines the individual qualifies for a subsidy.

Step
5

Select and Purchase Individual Health Insurance Coverage

An employee falling within one of the designated classes defined by the employer is eligible to participate in the ICHRA. All employees participating in the ICHRA (and any covered dependents) must have individual health insurance coverage, which includes Medicare Parts A and B, or Medicare Part C.

Employees must provide proof of such coverage on an annual basis. This can be as simple as having employees fill out a form that states they are enrolled in an appropriate policy. Alternatively, employers may leverage an outside service provider for documentation or have the insurance premiums paid directly. If the employee loses or cancels their individual health insurance, coverage under the ICHRA ends.

For many employees, the ICHRA will be their first experience with a reimbursement-based health benefit. Practical information to communicate includes: start date, how to obtain coverage (including a special enrollment period, if applicable), their allowance amount, how premium tax credits interact with the ICHRA, what can be reimbursed, and how reimbursements are processed.

Shopping for individual health insurance will be a new experience for many employees and may feel like an overwhelming task. Employers are in a position to provide information and tools to aid in the decision-making process. Employers may provide suggestions to employees on where to shop for benefits and whom to consult for private advice. However, employers must not influence employees when it comes to the actual selection of the insurance carrier or policy.

How ICHRAs Impact Premium Tax Credits (aka Subsidy)

For purposes of the subsidy, the marketplace helps an individual determine if the coverage made available through the employer, in this case the ICHRA, offers affordable coverage to the employee.

If the marketplace determines:

- The coverage offered by the employer is not affordable, employees may waive enrollment in the ICHRA and claim premium tax credits through the marketplace.
- The coverage offered by the employer is affordable, employees may not claim premium tax credits, even if they opt out of the ICHRA and purchase coverage through the marketplace.

If an employee participates in the employer-sponsored ICHRA, regardless of the ICHRA's affordability, the employee will not be eligible for a premium tax credit. For more information about the premium tax credit, including the premium tax credit eligibility requirements, see [irs.gov/aca](irs.gov/aca).

Step

6

Process Reimbursements and Premium Payments

ICHRAs require a process for verifying employees meet the requirement of being enrolled in an appropriate individual health insurance coverage. The administrator of the ICHRA must review and approve the employee's request for reimbursement. If approved, the ICHRA reimburses the employee up to the monthly contribution allowance.

Should the expense not be approved, the procedure for denied claims is followed. Typically, for a standard reimbursement model ICHRA, reimbursement is made by issuing a check, making an ACH deposit, or including the amount in an employee's payroll check.

Nexben's Simplified Reimbursement Process

Nexben solves for an often-cumbersome reimbursement process by facilitating premium payments directly to the insurance carrier and capturing the required verification information.

With Nexben's ICHRA solution, the employer defines the monthly contribution allowance available to each employee class. That contribution amount is applied to the monthly individual insurance premiums of the policy selected by each individual employee; any remaining premium balance due by the employee may be taken care of via employee payroll deduction.

Nexben's ICHRA solution provides a consolidated insurance carrier statement that requires one click of a button by the plan administrator. The uniquely automated premium billing feature facilitates premium payments to each individual insurance carrier based on the employee's individual policy selections.

TWO METHODS OF PAYROLL DEDUCTION

On Exchange

Federal or state exchange. The employee's portion of the premium may be payroll deducted on a post-tax basis (included in their taxable income).

Off Exchange

Non-federal or non-state exchange. The employee's portion of the premium may be payroll deducted on a pre-tax basis (excluded from their taxable income).

Administration

While it is possible for an employer to self-administer an ICHRA, it requires managing a number of important components, including:

- Written Plan Document
- Summary Plan Description (if subject to ERISA)
- COBRA Administration (if employer is large enough)
- Compliance with general HRA and group health plan requirements
- Contribution Allowance Evaluation
- Summary of Benefits and Coverage
- HIPAA Special Enrollment
- Claim Processing
- Reimbursement Mechanism
- Record Keeping
- Tax Reporting
- HIPAA privacy and security compliance (unless an exemption applies)

The items listed above, and other administrative tasks, are often time-consuming and labor intensive. Self-administration may also leave an employer vulnerable to liability and legal action. The following are a number of areas where outside assistance may be of great value and service:

Employee Privacy

For reimbursements to be tax-free, it must be substantiated that employees are using funds to pay for individual health insurance and medical expenses. Having an employee submit receipts directly to the employer for review creates a significant privacy issue. Information about an employee's medical expenses (including individual insurance premiums) is considered Protected Health Information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). In most cases, employers asking for and reviewing such Protected Health Information must ensure the privacy and security of that information to comply with HIPAA. Leveraging an administrator provides a necessary layer of privacy.

Record Keeping and Document Storage

Before submitting an expense for approval, an employee must attest that they are covered under an individual insurance policy. The IRS and Department of Labor require that employees submit proper documentation verifying their expenses and that supporting documentation be kept on file for up to 8 years. Record keeping can become problematic considering the sheer volume of claims, documentation required, and whether those requests were approved or denied. An outside service provider can provide an automated technology solution that keeps all digital records organized and secure, while complying with guidelines and regulations.

Contribution Allowance Evaluation

Employers may change monthly contribution allowances, provided adequate notice is given to employees. For most businesses, it makes sense to complete the evaluation as part of an annual benefits review and apply the changed contribution allowances with the start of the new plan year.

Annual ICHRA Opt-Out Requirement

At least once a year, employees must be allowed to opt-out of the ICHRA. For some employees, the opt-out option allows them to claim the premium tax credit available through the marketplace. An ICHRA requires all participating employees to enroll in either an individual insurance policy or Medicare, and the ICHRA needs to implement an annual process to ensure employees are registered and to verify their enrollment in the ICHRA. This can be as simple as having employees fill out a form that states they are enrolled in an appropriate policy. Alternatively, employers may leverage an outside service provider for documentation or have the insurance premiums paid directly to the insurance carriers.

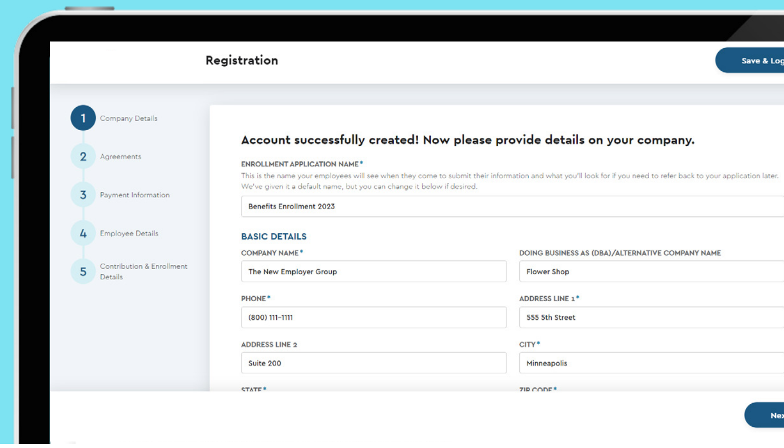
Changing Regulations

Healthcare policy continues to evolve. As the landscape shifts and changes, an outside service provider stays up to date on regulation changes.

The Nexben ICHRA Solution

Nexben's ICHRA solution is intelligently designed to **simplify the entire experience** – from shopping and purchasing coverage to billing and managing benefits.

Powered by Nexben's scalable, end-to-end technology, our ICHRA offers the premier insurance solution that gives employers the power to rein in costs, while also giving employees freedom of choice. Employers have the flexibility to select a comprehensive benefits package that helps their employees and fits their bottom line. Employees are empowered to shop the open market for individual insurance coverage that best suits their needs.



1 ADOPT

Employers determine their employee's needs and adopt the benefit package.

- Upload employee census in an industry-standard format.
- Establish employer contribution amount for each class of eligible employees.
- Fund the ICHRA payment account and open enrollment to their employees.

2 ENROLL

Employees access a consumer-friendly, personalized benefit portal to shop, compare, and then purchase an individual plan using a uniquely assigned account number.

- View side-by-side coverage comparisons to guide their decision-making.
- Get expert advice and support.
- Enjoy easy payroll-deducted premiums, if any.

3 MANAGE

Employers manage the benefits package through a single interactive statement to pay for all employee policies.

- Quickly access plan documents and summary plan documents.
- Easily monitor and manage employee enrollment in real-time, easing overall benefit plan administration.
- Enjoy automated premium payments, which eliminates the cumbersome reimbursement process.
- Receive one monthly consolidated statement for all employee policies. Nexben enables premium payments to each carrier based on each employee's individual coverage selection.

With Nexben's ICHRA solution, companies of all sizes can simplify the process of offering and managing health insurance benefits.

Visit nexben.com to learn more.