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December 21, 2018

Charles P. Rettig
Commissioner
Internal Revenue Service
Department of the Treasury
1111 Constitution Avenue NW
Washington, DC 20224

Preston Rutledge
Assistant Secretary
Employee Benefits Security Administration
Department of Labor
200 Constitution Ave, NW
Washington, DC 20210

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

RE: Health Reimbursement Arrangements and Other Account-based Group Health Plans

Dear Mr. Rettig, Mr. Rutledge and Ms. Verma:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, our clinician partners – including more than 270,000 affiliated physicians, 2 million nurses and other caregivers – and the 43,000 health care leaders who belong to our professional membership groups, the American Hospital Association (AHA) appreciates the opportunity to comment on the proposed rule from the Departments of the Treasury, Labor and Health and Human Services that would change how employers may use health reimbursement arrangements (HRAs) to help employees finance health care coverage.



Meaningful health care coverage is critical to living a productive, secure and healthy life. Coverage improves access to care; supports positive health outcomes, including an individual's sense of their own health and wellbeing; incentivizes appropriate use of health care resources; and reduces financial strain on individuals and families.¹ America's hospitals see firsthand the role coverage plays in enabling individuals and patients to access care, and the AHA supports the Administration's focus on expanding employers' options for offering meaningful coverage to their employees.

While employers are the primary source of coverage for most individuals and families, small and mid-size employers have struggled to offer this benefit, both as a result of affordability challenges as well as the administrative burden of managing health benefits. This proposed rule could increase the availability of coverage for employees as it seeks to reduce the burden, and potentially the cost, for employers offering coverage.

The Departments propose two significant changes to how employers may use HRAs to help employees finance coverage. The first would modify existing regulations to allow employers to pay a portion of the premiums for individual market coverage for employees and their allowable dependents using an HRA. In doing so, the employer could meet the mandate to offer coverage that meets both benefit and affordability standards. The second change would allow employers to use HRA funds up to a maximum benefit (\$1,800 in 2019 indexed to inflation) to pay the premiums for limited scope benefit plans, such as short-term limited-duration health plans. If combined with more comprehensive coverage, an employer also could meet the minimum coverage standards in this scenario.

The Departments propose to implement several "safeguards" to ensure that employees understand their coverage and that employers do not inappropriately move only higher-cost employees into the individual market, potentially destabilizing the risk pool. Employers would need to provide certain disclosures to employees, and the proposed rules would prohibit employers from offering employees a choice between an HRA integrated with individual health coverage and a traditional group health plan. Instead, employers would need to offer all individuals within a certain class of employees the same coverage option, subject to certain exceptions.

The AHA supports these changes as proposed. Health plans sold on the individual market that meet all consumer protections are a comparable alternative to employer-sponsored coverage. However, we urge the Departments to finalize these changes only so long as they also finalize the policies related to the comprehensiveness of coverage and anti-discrimination. Specifically, employers who use this coverage option should not

¹ American Hospital Association, "The Importance of Coverage," Nov. 2018. Accessed at: <https://www.aha.org/system/files/2018-10/report-coverage-overview-2018.pdf>

be permitted to use an HRA to buy substandard coverage and still meet the minimum coverage standard. In addition, we urge the Departments to finalize the proposed policies and develop enforcement mechanisms to prevent employers from directing less healthy employees into the marketplaces. Our more specific comments follow.

IMPORTANCE OF COVERAGE ADEQUACY

The Departments propose that, in order for employers to meet the minimum coverage standard using an HRA, the employee must be enrolled in coverage that complies with all individual market rules. In other words, the employer must enable the employee to purchase comprehensive coverage; short-term limited-duration health plans or other substandard coverage would not comply. **The AHA supports this provision, and our support for the proposed rule overall is predicated on its inclusion in the final policy.**

Consumers must have access to coverage that meets important minimum standards. Health insurance products that do not meet these standards put patients' financial and physical health at risk. Non-compliant health insurance products, like short-term, limited-duration health plans, are not required to comply with consumer protection or comprehensive coverage requirements, meaning that plans are free to elect not to cover all of the essential health benefits, including hospitalizations or maternity care, or services related to a pre-existing condition. They also may impose limits on the amount of benefits that an enrollee receives or impose high levels of cost-sharing, leaving patients liable for higher costs than are allowed in other health insurance products. HHS has previously acknowledged the risks associated with these plans, including "reduced access to some services and providers" and "increased out-of-pocket costs for some consumers, possibly leading to financial hardships."² We point the Departments to our [more extensive comments](#) on the inadequacy of these health plans and again urge that they not be considered an adequate substitute for employer group health coverage.

PROTECTING THE MARKETPLACE RISK POOLS

The Departments seek comment on whether the proposal is likely to strengthen or weaken the individual market risk pool, and what such a change may have on the cost of individual market coverage. The Departments also propose several policies to prevent employers from moving only their sicker, most-costly employees into the individual market. **The AHA supports the Departments' proposals to require that employers offer all employees within a certain class the same coverage option, as well as to provide adequate notice to employees that informs them about this coverage option.** We urge the Departments, however, to ensure that they have mechanisms to identify whether an employer has failed to adhere to these requirements and hold them accountable.

² Short-term, Limited-Duration Insurance Proposed Rule, 83 FR 7437, February 21, 2018. Codified at 26 CFR 54, 29 CFR 2590, 45 CFR 144, 146, and 148. Table 1.

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These protections are necessary to ensure the stability of the individual market risk pool. As the Departments note, a large influx of less healthy enrollees could destabilize already shaky individual markets, resulting in fewer coverage options and higher premiums as insurers attempt to protect themselves from losses. This would have wide-ranging implications for the millions of individuals and families who rely on the individual market for coverage. On the other hand, employers' use of this provision could grow individual market enrollment, improving the stability of the market and the cost of coverage. Such an outcome would have widespread benefits for everyone who relies on the individual market for coverage. However, this will only occur if the Departments finalize these protections as proposed and enforce them.

Thank you for your consideration of our comments. Please contact me if you have questions or feel free to have a member of your team contact Molly Smith, vice president for coverage and state issue forum, at mollysmith@aha.org or (202) 626-4639.

Sincerely,

/s/

Thomas P. Nickels
Executive Vice President