



Charles N. Kahn III
President and CEO

December 21, 2018

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Services
U.S. Department of Treasury
1111 Constitution Avenue NW
Washington, DC 20224

SUBJECT: Health Reimbursement Arrangements and Other Account-Based Group Health Plans [CMS-9918-P]

Dear Commissioner Rettig,

The Federation of American Hospitals (FAH) is the national representative of more than 1,000 investor-owned or managed community hospitals and health systems throughout the United States. Our members include teaching and non-teaching hospitals in urban and rural America, as well as inpatient rehabilitation, psychiatric, long-term acute care, and cancer hospitals. We are pleased to provide CMS with our views in response to the above referenced *Health Reimbursement Arrangements and Other Account-Based Group Health Plans [CMS-9918-P]* proposed rule published on October 29, 2018.

As direct providers of patient care and with expertise related to contracting with insurers providing coverage in the employer group and individual markets for insurance, we believe we have a unique perspective on how best to serve patient interests, support strong markets for insurance, and ensure affordable and comprehensive coverage is available to the maximum number of individuals.

The Department of Health and Human Services, Labor, and Treasury (hereinafter referred to as "the Departments") proposes to allow Health Reimbursement Arrangements (HRA), which are tax preferred accounts funded by employers, to be used to reimburse employees for premiums paid for health insurance coverage purchased in the individual market.

FAH supports actions that would help more employers offer and contribute to comprehensive health coverage for their employees; increase health coverage among the U.S. population overall; and increase the viability, stability, and sustainability of coverage in the

individual market for insurance. We appreciate the balance that must be achieved in order to meet these goals and caution the Departments to consider what impact the proposed policies may have on the important and robust employer sponsored insurance market.

We caution the Departments to ensure that their actions do not create incentives to draw individuals out of the medium- and large- group employer markets for insurance. As you know, coverage offered to employees of larger firms, when compared with individual market health insurance, tends to be more stable, distribute risk more broadly, and provide more generous benefits. Furthermore, employees often benefit from having employers who negotiate with insurers and advocate on their behalf.

Employment-Based Coverage

The Departments estimated that overall, the availability of HRAs would result in a net increase in the number of people with insurance of 0.8 million by 2028. That figure is the net effect of a combined loss of coverage in the employer group market of 6.8 million people and an increase in coverage in the individual market of 7.5 million people.

While we applaud efforts to increase the stability and viability of coverage in the individual market for health insurance, we caution against policies that draw those individuals from insurance that is more comprehensive, affordable and administratively effective.

Employment-based health benefits have typically provided more comprehensive coverage when compared with coverage offered in the individual market for insurance. For example, it has long been the case that employment-based coverage has considerably lower deductibles than coverage provided in the individual market for insurance.¹ The other side of the same coin is that the actuarial value (AV) of a silver level plan (the most popular coverage option) in the individual market is equal to about 80 percent while the AV of typical employer coverage in the same year was estimated to be higher -- 83.5 percent.² The higher deductibles of individual market plans can often mean individuals are more exposed to unanticipated costs, often for amounts that represent significant financial hardships.

Employers contributing to worker's traditional group coverage has also historically been considerably more generous than their contributions to HRAs. For example, in 2015, the average employer contribution to a single employee health plan was \$5,197, while in that same year, typical HRA funding was only \$1,767.³ Should the Departments finalize this proposal, we encourage the final policy to require employers who choose to take advantage of HRAs integrated with individual market health insurance coverage to fund those accounts in ways that would close or considerably narrow that very wide gap. Not doing so may result in funded HRA accounts that are not adequate for the purchase of individual market insurance.

¹ In 2015, the average deductible for employer-based coverage was \$1,217 versus the deductibles for a silver level plan in the individual market of \$2,951 and a bronze level plan of \$5,187. See J. Gabel, H. Whitmore, M. Green, S. Stromberg and R. Oran, Consumer Cost-Sharing in Marketplace vs Employer Health Insurance Plans, 2015, The Commonwealth Fund, December 2015, <https://www.commonwealthfund.org/publications/issue-briefs/2015/dec/consumer-cost-sharing-marketplace-vs-employer-health-insurance>.

² 2015 Milliman Medical Index, <http://www.milliman.com/uploadedFiles/insight/Periodicals/mmi/2015-MMI.pdf>.

³ See United Benefit Advisors Health Plan Survey Special Report; HSAs & HRAs: How They're Doing, http://cdn2.hubspot.net/hubfs/182985/pdf/UBA_Special_Report-HSA-HRA-FINAL.pdf; and Kaiser Family Foundation, 2015 Employer Health Benefits Survey, <http://files.kff.org/attachment/summary-of-findings-2015-employer-health-benefits-survey>.

For those reasons, before finalizing the policy, we encourage the Department to consider the changes to availability, generosity and contributions toward coverage through traditional sources versus through the new integrated HRAs to ensure that the policy does not unintentionally worsen availability and access to health care for tens of millions of workers and their family members. Such an evaluation should be accompanied by guardrails, such as funding requirements, that ensure individuals have the resources available to purchase comprehensive coverage.

Introducing Potential for Segmentation Based on Health Risk

The Departments propose provisions intended to prevent discrimination. Their objective is to keep employers from using HRAs integrated with individual market insurance as an incentive to encourage higher cost employees to leave the traditional group health plan while retaining lower cost employees in their traditional plan. We appreciate those proposed protections but are concerned that additional risk segmentation could continue to occur despite the proposed protections.

There are at least two ways that such risk segmentation could arise under the proposed rules: (1) If those employers with relatively higher cost workforces are the ones most likely to choose this alternative while those with lower cost workforces retain traditional group coverage; and (2) If employers provide this alternative to classes of workers who are higher risk, older, or higher cost while retaining more traditional coverage options for other classes of workers.

For all of these reasons we express our reservations about the proposed rules liberalizing the rules around the use of HRAs integrated with individual health insurance coverage. While we support actions that encourage employers to contribute to employees' coverage, and that draw more individuals into the individual market for insurance to improve its risk profile and increase stability, we are concerned that HRAs integrated with individual health insurance, if proper guidelines are not in place, could result in fewer individuals with traditional employment based health benefits, lower employer contributions towards that care, and less coverage.

Thank you for the opportunity to comment. Should you have any questions, please feel free to contact me or Paul Kidwell on my staff at (202) 624-1500.

Sincerely,



cc: The Honorable Seema Verma, Administrator, Centers for Medicare & Medicaid Services
The Honorable Preston Rutledge, Assistant Secretary, Employee Benefits Security Administration