

December 19, 2018

Internal Revenue Service
United States Department of the Treasury
1111 Constitution Avenue NW
Washington, DC 20224

Re: REG-136724-17

To Whom It May Concern:

The following comments on the proposed regulation “Health Reimbursement Arrangements and Other Account-Based Group Health Plans,” published October 29, 2018, are submitted on behalf of the members of the National Association of Insurance Commissioners (NAIC), which represents the chief insurance regulators in the 50 states, the District of Columbia, and the five United States territories.

State insurance regulators continue to partner with federal officials to maintain stable, competitive insurance markets for state residents. A critical factor in keeping markets stable is to ensure balanced risk pools, particularly in the single statewide risk pools established under the Affordable Care Act. Our comments on the proposed rule are in support of provisions that are expected to protect the individual risk pool against adverse selection. We urge the Departments to remove other provisions that could destabilize small group risk pools.

First, we urge the Departments to maintain strong safeguards against adverse risk selection due to Health Reimbursement Arrangements (HRAs). The Proposed Rule includes safeguards to prevent discrimination against individuals based on health status and promote market stability. In particular, it would allow employers to provide only an HRA or a traditional group health plan, not both, to a particular class of employees. And employers would be required to provide an arrangement to all employees in a class on the same terms. Without safeguards like these, employers could offer both a traditional group health plan that is attractive only to lower-risk individuals and an HRA, leading higher-risk individuals to use the HRA integrated with individual market coverage. This would result in a concentration of higher-risk enrollees in the individual market, jeopardizing market stability. We support keeping these safeguards in the final rule.

Risk selection can also occur if employers choose to offer an HRA in lieu of a traditional group health plan only to a class of employees that is collectively at higher risk. The consistency requirement, which requires employers to define employee classes prior to the plan year, helps support the safeguards and it should be maintained. We encourage the Departments to consider further protections to prevent employers from manipulating employee classes in ways that segregate employees based on their risk of high health costs.

The Proposed Rule also has the potential to affect the stability of the small group market through the excepted benefit HRA’s application to short-term, limited duration insurance (STLDI). NAIC urges the Departments not to allow excepted benefit HRAs to be used with short-term, limited duration coverage due to the potential for adverse selection against the small group risk pool.

Under the Proposed Rule, employers that offer the excepted benefit HRA must also offer a traditional group health plan. Small employers would offer these traditional group health plans through the small group market in their states. Offering an excepted benefit HRA that can be used for STLDI could encourage lower-risk individuals, who can pass STLDI underwriting, to decline an employer’s traditional small group coverage and instead enroll in a

short-term, limited duration plan. This would leave higher-risk individuals in the small group market, potentially destabilizing the market if enough small employers in the state make this choice.

While employees may benefit from the flexibility of an HRA to purchase excepted benefit coverage, such as dental or vision coverage, STLDI is much more similar in the type of benefits covered to comprehensive health coverage and thus is more likely to be substituted for comprehensive coverage. STLDI is not included in the definition of excepted benefits in statute or at 45 CFR 148.220 and serves a very different purpose than excepted benefits.

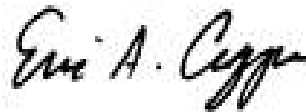
With regard to Special Enrollment Periods (SEPs), we support providing an SEP to individuals newly provided an HRA, including a QSEHRA. We further support making the SEP available on a recurring basis to individuals whose HRA operates on a non-calendar year schedule. This would offer convenience for employees and employers who choose to begin their HRA plan year on a date other than January 1.

Thank you for this opportunity to comment. As state regulators continue to review the Departments' regulations and policies and their impact on market competition, premiums, and consumer protections, we will continue to provide comments. We are available to discuss these or other issues as the regulation is finalized.

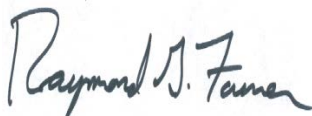
Sincerely,



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