

DATE: June XX, 2019

TO: Neomi Rao  
Administrator, OIRA

FROM: Seema Verma  
Administrator

SUBJECT: Request for Emergency Clearance of the Paperwork Reduction Act Package for Health Reimbursement Arrangements and Other Account-Based Group Health Plans Final Rule

### **Emergency Justification**

The Centers for Medicare & Medicaid Services (CMS) is requesting that an information collection request associated with the Health Reimbursement Arrangements (HRA) final rule be processed in accordance with the implementing regulations of the Paperwork Reduction Act of 1995 at 5 CFR 1320.13(a)(2)(i). We believe HRA plan sponsors will be unable to provide eligible participants with critical information related to the offer of an individual coverage HRA prior to the 2019 Open Enrollment if the normal, non-emergency clearance procedures are followed.

Specifically we are requesting emergency approval for information collection requirements (ICRs) related to substantiation of individual health insurance coverage (45 CFR 146.123(c)(5)), notice requirement for individual coverage HRA (45 CFR 146.123(c)(6)), notification of termination of coverage (45 CFR 146.123(c)(1)(iii)), and the special rule for excepted benefit HRAs (45 CFR 146.145(b)(3)(viii)(F)). In accordance with 5 CFR 1320.13(a)(2)(i), we believe that public harm is reasonably likely to ensue if the normal clearance procedures are followed. The use of normal clearance procedures is reasonably likely to prevent the collection of information. In general, the individual coverage HRA notice must be provided to participants at least 90 days before the beginning of each plan year. The Departments of Health and Human Services, Labor and Treasury are making available to HRA plan sponsors model notice and model attestation language for individual coverage HRAs to ensure that eligible participants have necessary information related to the HRA they are being offered. Employers will need to add information specific to their HRAs into the model notice. If the information collection is not approved on an emergency basis, employers with an HRA plan year beginning on January 1, 2020, may not have the needed certainty to be able to prepare the notices and send them to participants by October 1, 2019. If employers do not receive the model notice and attestation in final form until later, some may rush to meet the October 1, 2019 deadline and in the process incur additional costs and increase the likelihood that the required notice contains mistakes or does not comply with the regulatory requirements. This could affect individuals' ability to make informed decisions about whether to accept the HRA, could affect individuals' eligibility for the premium tax credit for Exchange coverage, and could affect the accuracy of affordability

determinations with respect to whether an individual's individual coverage HRA offer makes them ineligible for advanced payment of the premium tax credit. While employers who have not previously offered employees coverage may be able to delay the start of their HRA plan year and send the notice later, employers who are currently offering traditional group coverage with a plan year beginning on January 1, 2020 and who cannot meet the October 1, 2019 deadline would likely be forced to wait until the following plan year to take advantage of the flexibility added in the rule. For employees, this may mean fewer choices of plans.

## **Background**

The Department of the Treasury, the Department of Labor, and the Department of Health and Human Services (collectively, the Departments) will be issuing final regulations in June 2019, titled "Health Reimbursement Arrangements and Other Account-Based Group Health Plans" under section 2711 of the PHS Act and the health nondiscrimination provisions of HIPAA, Public Law 104-191 (HIPAA nondiscrimination provisions). The regulations expand the use of health reimbursement arrangements and other account-based group health plans (collectively referred to as HRAs). In general, the regulations accomplish this by eliminating the current prohibition on integrating HRAs with individual health insurance coverage, thereby permitting employers to offer individual coverage HRAs to employees enrolled in individual health insurance coverage or Medicare. Under the regulations employees will be permitted to use amounts in an individual coverage HRA to pay expenses for medical care (including premiums for individual health insurance coverage and Medicare), subject to certain requirements. The final rules include ICRs related to the substantiation of individual health insurance coverage, a notice requirement for individual coverage HRAs, notification of termination of coverage and a special rule for excepted benefit HRAs.

## **Timeline**

TBD – [Date Placeholder]

- Emergency Information Collection Requirement formally submitted to OMB

TBD - [Date Placeholder]

- OMB approval received

### **July 2019 onwards**

- Employers prepare individual coverage HRA notices and substantiation documents based on model notice and attestation language.

### **August 26, 2019**

- 60-day FR notice submitted to the Office of the Federal Register (OFR) for publication

### **August 30, 2019**

- Target publication date for 60-day FR notice to initiate standard OMB approval process.

- Start of the 60-day public comment period.
- PRA package posted for public review on the CMS PRA web site.

**October 1, 2019**

- HRA sponsors with a plan year starting January 1, 2020 must provide notice regarding individual coverage HRA offers.

**October 29, 2019**

- End of 60-day comment period.
- The Departments review and respond to comments, as needed.
- PRA package revised as needed

**November 19, 2019**

- Final PRA package due to OSORA for review and processing.
- OSORA submits PRA package to CMS/OA for final clearance.

**November 26, 2019**

- 30-day FR notice submitted to the OFR for publication.

**December 2, 2019**

- Target publication date for 30-day FR notice.
- Start of 30-day public comment period.
- PRA package formally submitted to OMB in ROCIS.