

Appendix A: Comment & Response Summary
Health Reimbursement Arrangements and Other Account-Based Group Health Plans
(CMS-10704/OMB control number: 0938-1361)

Comment: One commenter suggested that the model notice include a definition and overview of “medical care expenses” and also inform participants about possible tax implications of dropping individual health insurance coverage.

Response: We thank the commenter for their suggestions but believe that no changes to the model notice are necessary. Individual coverage HRAs are not required to reimburse all medical care expenses. For example, an individual coverage HRA might reimburse only premiums for individual health insurance coverage or Medicare. Including an overview of the term “medical care expenses” in the notice will be confusing for participants with individual coverage HRAs that only reimburse for some, but not all, medical care expenses. Moreover, most individual coverage HRAs are subject to the requirements of the Employee Retirement Income Security Act (ERISA), including the requirement that participants be provided a summary plan description, including a description or summary of the benefits under the plan.

With regards to tax implications of dropping individual health insurance coverage, as explained in the preamble to the HRA regulations (84 FR 28919), the Departments declined to adopt a suggestion made by one commenter that individual coverage HRA amounts made available for a month be treated as taxable income for individuals who do not have individual health insurance coverage for the month and that the attestation requirement and required notice include a related warning. As the Departments explained, whether an individual is enrolled in individual health insurance coverage for a month relates to whether the individual coverage HRA satisfies the conditions for integration for the month and does not affect the tax treatment of reimbursements provided to a participant under the individual coverage HRA.¹ The prohibition on reimbursing expenses incurred after an individual’s coverage ceases applies to the individual coverage HRA rather than to the individual seeking reimbursement.

¹ However, see Code section 106(g) regarding the taxation of QSEHRA reimbursements if an individual fails to have minimum essential coverage.