Supporting Statement - Part A
Health Reimbursement Arrangements and Other Account-Based Group Health Plans
(CMS-10704/OMB control number: 0938-1361)

A. Background

The Department of the Treasury, the Department of Labor, and the Department of Health and Human Services (collectively, the Departments) issued final regulations on June 20, 2019, titled "Health Reimbursement Arrangements and Other Account-Based Group Health Plans" (84 FR 28888) 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 expand the use of HRAs by eliminating the current prohibition on integrating HRAs with individual health insurance coverage, thereby permitting employers to offer individual coverage HRAs to employees that can be integrated with 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.

B. Justification

1. Need and Legal Basis

Under section 45 CFR 146.123(c)(5) of the final regulations, "Health Reimbursement Arrangements and Other Account-Based Group Health Plans," an HRA must implement reasonable procedures to annually verify that individuals whose medical care expenses are reimbursable by the HRA are, or will be, enrolled in individual health insurance coverage (other than coverage that consists solely of excepted benefits) or Medicare Part A and B or Part C for the entire plan year on or before the first day of the plan year, or, for an individual who is not eligible to participate in the individual coverage HRA on the first day of the plan year, by the date of enrollment in the individual coverage HRA (annual coverage substantiation requirement).

In addition to the annual substantiation of coverage, with each new request for reimbursement of an incurred medical care expense for the same plan year, the regulations provide that the HRA may not reimburse a participant for any medical care expenses unless, prior to each reimbursement, the participant provides substantiation that the participant and, if applicable, any dependent(s) whose medical care expenses are requested to be reimbursed were enrolled in individual health insurance coverage (other than coverage that consists solely of excepted benefits) for the month during which the medical care expenses were incurred. The attestation may be part of the form used for requesting reimbursement.

To satisfy this requirement, the HRA may require that the participant submit an attestation or a document provided by a third party (for example, an explanation of benefit or insurance card) as substantiation.

In addition, section 45 CFR 146.123(c)(6) includes a requirement that an HRA provide written notice to eligible participants. The HRA is required to provide a written notice to each participant at least 90 days before the beginning of each plan year. For participants who are not yet eligible to participate at the beginning of the plan year (or who are not eligible when the notice is provided at least 90 days prior to the beginning of the plan year), the HRA must provide the notice no later than the date on which the participant is first eligible to participate in the HRA. However, the HRA is encouraged to provide the notice as soon as practicable prior to the date a participant becomes eligible. If the HRA is sponsored by an employer that is established less than 120 days prior to the beginning of the first plan year of the HRA, the notice may be provided no later than the date on which the participants are first eligible to participate in the individual coverage HRA.

Under section 45 CFR 146.123(c)(1)(iii), if an individual's health insurance coverage is cancelled or terminated, including retroactively, for failure to pay premiums or any other reason (for example, a rescission), the individual coverage HRA must require that the individual notify the HRA that coverage has been cancelled or terminated and the date on which the cancellation or termination is effective.

2. Information Users

HRAs will need the verification of individual coverage to ensure that participants and dependents are enrolled in individual health insurance coverage or Medicare and are eligible to receive reimbursements. The notice sent by the HRAs to eligible participants will ensure that they understand the terms of the HRA, the right to opt out and the consequences of enrolling in the HRA. HRAs will also need to know when an enrollee's individual market coverage is terminated in order to stop issuing reimbursements from the HRA. HHS will also need the recommendation from state authorities in order to take the steps necessary to protect the state's small group market.

3. Use of Information Technology

The documents related to substantiation of individual health insurance coverage, notices to eligible participants, notification of termination of coverage, and the recommendation from state authorities may be provided electronically.

4. Duplication of Efforts

There is no duplication of efforts for these information collection requirements (ICRs).

5. Small Businesses

Small businesses are not significantly affected by this collection.

6. Less Frequent Collection

If this information collection is conducted less frequently, eligible individuals will not have information regarding the HRAs being offered by their employers in order to make informed decisions and the HRAs will not be able to confirm that participants are eligible to receive reimbursements from the HRAs.

7. Special Circumstances

There are no special circumstances.

8. Federal Register/Outside Consultation

A Federal Register notice was published on September 6, 2019 (84 FR 46951), providing the public with a 60-day period to submit written comments on the ICRs. We received one comment, which is summarized in Appendix A.

9. Payments/Gifts to Respondents

No payments or gifts are associated with these ICRs.

10. Confidentiality

Privacy of the information provided will be protected to the extent provided by law.

11. Sensitive Questions

These ICRs involve no sensitive questions.

12. Burden Estimates (Hours & Wages)

To derive wage estimates, we generally used data from the Bureau of Labor Statistics to derive average labor costs (including a 100 percent increase for fringe benefits and

overhead) for estimating the burden associated with the ICRs.[1] Table 1 below presents the mean hourly wage, the cost of fringe benefits and overhead, and the adjusted hourly wage. As indicated, employee hourly wage estimates have been adjusted by a factor of 100 percent.

TABLE 1: Adjusted Hourly Wages Used in Burden Estimates

Occupation Title	Occupational Code	Mean Hourly Wage ($/hour)	Benefits and Fringe Overhead ($/hour)	Adjusted Hourly Wage ($/hour)
Compensation and Benefits Manager	11-3111	$63.87	$63.87	$127.74
Lawyer	23-1011	$69.34	$69.34	$138.68

ICRs Regarding Substantiation of Individual Health Insurance Coverage (45 CFR 146.123(c)(5))

An HRA must implement reasonable procedures to annually verify that participants or dependents, whose medical care expenses are reimbursable by the HRA are, or will be, enrolled in individual health insurance coverage or Medicare for the entire plan year on or before the first day of the plan year, or, for an individual who is not eligible to participate in the individual coverage HRA on the first day of the plan year, by the date HRA coverage begins (annual coverage substantiation requirement).

In addition to the annual substantiation of coverage, with each new request for reimbursement of an incurred medical care expense for the same plan year, the final rules provide that the HRA may not reimburse a participant for any medical care expenses unless, prior to each reimbursement, the participant provides substantiation that the individual on whose behalf reimbursement of medical care expenses are requested to be reimbursed were enrolled in individual health insurance coverage or Medicare for the month during which the medical care expenses were incurred. The attestation may be part of the form used for requesting reimbursement.

To satisfy these substantiation requirements, the HRA may require that the participant submit a document provided by a third party (for example, an explanation of benefits or insurance card) showing that the participant and any dependent(s) covered by the individual coverage HRA are, or will be, enrolled in individual health insurance coverage or Medicare

[1] See May 2018 Bureau of Labor Statistics, Occupational Employment Statistics, National Occupational Employment and Wage Estimates at https://www.bls.gov/oes/current/oes_stru.htm .

during the plan year or an attestation by the participant stating that the participant and any dependent(s) are, or will be, enrolled in individual health insurance coverage or Medicare, the date coverage began or will begin, and the name of the provider of the coverage. Additionally, nothing in the final rules would prohibit an individual coverage HRA from establishing procedures to comply with the substantiation requirements through electronic means, so long as the procedures are reasonable to verify enrollment. The ongoing substantiation may be in the form of a written attestation by the participant, which may be part of the form used for requesting reimbursement and which will minimize the burden on plan sponsors and participants. The ongoing substantiation requirement may also be satisfied by a document from a third party. The associated cost of substantiation will be minimal and is, therefore, not estimated.

The Departments released guidance providing model attestation language, separate from the regulations. However, individual coverage HRAs will not be required to use the model attestation. For those HRAs that elect to use the model attestation language provided by the Departments, it will further reduce burden for HRAs and participants.

ICRs Regarding Notice Requirement for Individual Coverage HRA (45 CFR 146.123(c)(6))

An HRA is required to provide a written notice to eligible participants. In general, the HRA will be required to provide a written notice to each participant at least 90 days before the beginning of each plan year. For participants who are not yet eligible to participate at the beginning of the plan year (or who are not eligible when the notice is provided at least 90 days prior to the beginning of the plan year), the HRA must provide the notice no later than the date on which the HRA may first take effect for the participant. However, the Departments encourage the HRA to provide the notice as soon as practicable prior to the date the HRA may first take effect. The final rules provide that if the HRA is sponsored by an employer that is established less than 120 days prior to the beginning of the first plan year of the HRA, the notice may be provided no later than the date on which the HRA may first take effect for the participant.

The written notice will be required to include certain relevant information, including a description of the terms of the HRA, including the maximum dollar amount made available that is used in the affordability determination under the Code section 36B rules including information on when the amounts will be made available (for example, monthly or annually at the beginning of the plan year); a statement of the right of the participant to opt-out of and waive future reimbursement under the HRA; a description of the potential availability of the PTC for a participant who opts out of and waives an HRA if the HRA is not affordable under the PTC rules; a description of the PTC eligibility consequences for a participant who accepts the HRA; a statement on how the participant may find assistance for determining their individual coverage HRA affordability; a statement that the participant must inform any Exchange to which they apply for advance payments of the PTC of certain relevant

information; contact information (including at least a phone number) of an individual or a group of individuals who participants may contact with questions regarding the individual coverage HRA; a statement that the participant should retain the written notice because it may be needed to determine whether the participant is allowed the PTC; a statement that the HRA may not reimburse any medical care expense unless the substantiation requirements are satisfied; a statement of availability of an SEP for employees and dependents who newly gain access to the HRA; the date as of which coverage under the HRA may first become effective and the date on which the HRA plan year ends; and a statement to clarify further that there are multiple types of HRAs and the type the participant is being offered is an individual coverage HRA.

The written notice may include other information, as long as the additional content does not conflict with the required information. The written notice will not need to include information specific to a participant.

The Departments provided model language on certain aspects of the notice that are not employer-specific, including model language describing the PTC consequences of being offered and accepting an individual coverage HRA, how the participant may find information to determine whether the individual coverage HRA offered is affordable, and language to meet the requirement to include a statement regarding the availability of an SEP in the individual market for individuals for whom an individual coverage HRA is newly made available. While the Departments hope it will be useful to employers, plan sponsors will not be required to use the model language and the final rules do not prohibit an employer from providing more individualized notices, such as different notices for different classes of employees, if the employer so chooses.

HHS estimates that for each HRA plan sponsor, a compensation and benefits manager will need 2 hours (at $127.74per hour) and a lawyer will need 1 hour (at $138.68 per hour) to prepare the notices. The total burden for an HRA plan sponsor will be 3 hours with an equivalent cost of approximately $394. This burden will be incurred the first time the plan sponsor provides an individual coverage HRA. In subsequent years, the burden to update the notice is expected to be minimal and therefore is not estimated. If the HRA plan sponsor elects to use the model notice, the burden may be reduced.

HHS estimates that in 2020, an estimated 1,203 state and local government entities will offer individual coverage HRAs.[2] The total burden to prepare notices will be approximately 3,610

[2] U.S. Department of the Treasury, Office of Tax Analysis simulation model suggests that in 2020, approximately 80,000 employers will offer individual coverage HRAs, with 1.1 million individuals receiving an offer of an individual coverage HRA. These numbers will increase to 200,000 employers and 2.7 million individuals in 2021 and to 400,000 employers and 5.3 million individuals in 2022. The Departments estimate that there is, on average, 1 dependent for every policyholder. The Departments also estimate that approximately 2 percent of employers are state and local government entities, accounting for approximately 14 percent of participants.

hours with an equivalent cost of approximately $474,273. In 2021 approximately 1,805 additional state and local government entities will offer individual coverage HRAs for the first time and will incur a burden of approximately 5,415 hours with an equivalent cost of approximately $711,410. In 2022, approximately 3,008 additional state and local government entities will offer individual coverage HRAs for the first time and will incur a burden of approximately 9,024 hours with an equivalent cost of approximately $1.19 million.

HRA plan sponsors will provide the notice to eligible participants every year. HHS estimates that HRA plan sponsors will provide printed notices to approximately 99,178 eligible participants[3] in 2020, 243,438 eligible participants in 2021 and 477,859 eligible participants in 2022. HHS anticipates that the notices will be approximately 6 pages long and the cost of materials and printing will be $0.05 per page, with a total cost of $0.30 per notice. It is assumed that these notices will be provided along with other benefits information with no additional mailing cost. HHS assumes that approximately 54 percent of notices will be provided electronically and approximately 46 percent will be provided in print along with other benefits information. Therefore, in 2020, state and local government entities providing individual coverage HRAs will print approximately 45,622 notices at a cost of approximately $13,687. In 2021, approximately 111,981 notices will be printed at a cost of approximately $33,594 and in 2022, approximately 219,815 notices will be printed at a cost of approximately $65,945.

TABLE 2. Annual Burden and Costs
Response Type: R=reporting; RK=recordkeeping; TPD=third-party disclosure

CFR Section	Year	Number of Respondents	Number of Responses	Burden per Response (hours)	Total Annual (Hours)	Labor Rate ($/hour)	Cost Per Response	Total Cost	Response Type	Frequency
45 CFR 146.123(c)(6)	2020	1,203	99,178	3	3,610	$131.39	$0.30	$487,960	TPD	Annual
	2021	1,805	243,438	3	5,415	$131.39	$0.30	$745,004		
	2022	3,008	477,859	3	9,024	$131.39	$0.30	$1,251,628		
	3 year Average	2,005	273,492	3	6,016	$131.39	$0.30	$828,197		

[3] U.S. Department of the Treasury, Office of Tax Analysis simulation model provides estimates of the number of participants and dependents offered an individual coverage HRA. Number of eligible participants is estimated based on the assumption that 75 percent of eligible participants will enroll in their employers' plans. See Kaiser Family Foundation, "2017 Employer Health Benefits Survey", Section 3, https://www.kff.org/health-costs/report/2017employer-health-benefits-survey/.

ICRs Regarding Notification of Termination of Coverage (45 CFR 146.123(c)(1)(iii))

If an individual's health insurance coverage is cancelled or terminated, including retroactively, for failure to pay premiums or any other reason (for example, a rescission), the individual coverage HRA must require that the individual notify the HRA that coverage has been cancelled or terminated and the date on which the cancellation or termination is effective. The associated cost of this notification will be minimal and is, therefore, not estimated.

13. Capital Costs

There are no capital costs.

14. Cost to Federal Government

There is no cost to the federal government.

15. Changes to Burden

There is no change in burden.

16. Publication/Tabulation Dates

There are no plans to publish the outcome of the information collection.

17. Expiration Date

The expiration date will be displayed on the first page of each instrument (top, right-hand corner).

ATTACHMENTS:

1. INDIVIDUAL COVERAGE HRA MODEL ATTESTATIONS

2. INDIVIDUAL COVERAGE HRA MODEL NOTICE

3. APPENDIX A: COMMENT & RESPONSE SUMMARY