

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 expanded the use of health reimbursement arrangements and other account-based group health plans (collectively referred to as HRAs) and recognized certain HRAs as limited excepted benefits (the excepted benefit HRA), for plan years beginning on or after January 1, 2020. In general, the final regulations expanded the use of HRAs by eliminating the prohibition on integrating HRAs with individual health insurance coverage, thereby permitting employers to offer individual coverage HRAs (ICHRAs) to employees that can be integrated with individual health insurance coverage or Medicare. Under the regulations, employees are permitted to use amounts in an ICHRA to pay expenses for medical care (including premiums for individual health insurance coverage and Medicare), subject to certain requirements.

Additionally, under the final regulations, benefits provided under an HRA or other account-based group health plan (other than a health flexible spending arrangement) will qualify as limited excepted benefits not subject to PHS Act title XXVII requirements if they: (1) are offered by a plan sponsor that also offers traditional group health plan coverage that is not limited to excepted benefits for the plan year to the participant; (2) are funded with amounts newly made available for each plan year that do not exceed \$1,800, adjusted annually in a manner set forth in the final regulations; (3) do not reimburse premiums for individual health insurance coverage, group health plan coverage (other than COBRA continuation coverage or other continuation coverage), or Medicare, except for coverage that consists solely of excepted benefits; and (4) are made available under the same terms to all similarly situated individuals, regardless of any health factor.

In the preamble to the final regulations, the Departments noted that long-standing notice requirements under Part 1 of ERISA already apply to private-sector, employment-based plans. The Departments explained that under those notice requirements, excepted benefit HRAs (EBHRAs) that are subject to ERISA generally should provide information on eligibility to receive benefits, annual or lifetime caps or other limits on benefits under the plan, and a description or summary of the benefits. Accordingly, the HRA regulations included a cross-reference to existing ERISA notice provisions for EBHRAs that are subject to ERISA, to help ensure that sponsors of such EBHRAs are aware of their obligations under those provisions. HHS believes individuals offered EBHRAs by non-Federal

governmental plan sponsors should also have access to clear information about their EBHRA.

The Centers for Medicare & Medicaid Services (CMS) is requesting an extension of OMB approval for the data collections included in this information collection request (ICR). CMS is also revising this ICR to include data collections related to EBHRAs, which were previously included in a separate ICR currently approved under OMB Control Number 0938-1375, which will be discontinued once this ICR receives OMB approval.

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 ICHRA must implement reasonable procedures to annually verify that individuals whose medical care expenses are reimbursable by the ICHRA 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 ICHRA on the first day of the plan year, by the date of enrollment in the ICHRA (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 ICHRA 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) or Medicare Part A and B or Part C 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 ICHRA 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 ICHRA provide written notice to eligible participants. The ICHRA 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 ICHRA must provide the notice no later than the date on which the participant is first

eligible to participate in the HRA. However, the ICHRA is encouraged to provide the notice as soon as practicable prior to the date a participant becomes eligible. If the ICHRA 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 ICHRA.

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 ICHRA 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.

Under section 45 CFR 146.145(b)(3)(viii)(E) in the final regulations "Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2021; Notice Requirement for Non-Federal Governmental Plans" (May 14 2020, 85 FR 29164), EBHRAs offered by non-Federal governmental entities are required to provide notice consistent with the discussion in the preamble to the HRA regulations.¹ Specifically, an EBHRA offered by a non-Federal governmental plan sponsor is required to provide a notice that describes conditions pertaining to eligibility to receive benefits, annual or lifetime caps or other limits on benefits under the EBHRA, and a description or summary of the benefits available under the EBHRA. This is generally consistent with the content requirements of DOL summary plan description regulations at 29 CFR 2520.102-3(j)(2) and (3), although the content of the EBHRA notice provided by a non-Federal governmental plan sponsor does not have to include every data element specified in those DOL regulations. The notice must be provided in a manner reasonably calculated to ensure actual receipt by participants eligible for the EBHRA, such as by providing the notice in the same manner in which the plan sponsor provides other notices or plan documents to plan participants.

This notice must be provided no later than 90 days after the employee becomes a participant in the EBHRA and annually thereafter. Therefore, the notice must be provided no later than 90 days after the first day of the EBHRA plan year, or in the case of an employee who becomes a participant after the start of the plan year, no later than 90 days after the employee becomes a participant in the EBHRA.

2. Information Users

ICHRAAs will need the verification of individual health insurance coverage or Medicare or Medicare Part A and B or Part C to ensure that participants and dependents are enrolled in individual health insurance coverage or Medicare Part A and B or Part C and are eligible to receive reimbursements. The notice sent by the ICHRAAs to eligible participants will ensure that they understand the terms of the ICHRA, the right to opt out and the consequences of

¹ 84 FR 28888 at 28941.

enrolling in the ICHRA. ICHRAs will also need to know when an enrollee's individual market coverage is terminated in order to stop issuing reimbursements from the ICHRA.

The notice sent by the EBHRAs to eligible participants will provide employees with information regarding EBHRAs offered by their employers. The notice will describe conditions pertaining to eligibility to receive benefits, annual or lifetime caps or other limits on benefits under the EBHRA, and a description or summary of the benefits available under the EBHRA.

3. Use of Information Technology

The documents related to substantiation of individual health insurance coverage or Medicare Parts A and B or Part C, notices to eligible participants, and notification of termination of coverage may be provided electronically.

4. Duplication of Efforts

There is no duplication of efforts for these data collections.

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 ICHRAs and EBHRAs being offered by their employers in order to make informed decisions and the ICHRAs will not be able to confirm that participants are eligible to receive reimbursements from the ICHRAs.

7. Special Circumstances

There are no special circumstances.

8. Federal Register/Outside Consultation

A Federal Register notice was published on February 7, 2023 (88 FR 7976), providing the public with a 60-day period to submit written comments on the ICRs. No comments were received.

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

This data collection will not involve 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.² 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)	Hourly Fringe Benefits and Overhead Rate (\$/hour)	Adjusted Hourly Wage (\$/hour)
Compensation and Benefits Manager	11-3111	\$67.05	\$67.05	\$134.10
Lawyer	23-1011	\$71.17	\$71.17	\$142.34

Substantiation of Individual Health Insurance Coverage or Medicare (45 CFR 146.123(c)(5))

An ICHRA 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 Parts 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 ICHRA on the first day of the plan year, by the date ICHRA coverage begins (annual coverage substantiation requirement).

² See May 2021 Bureau of Labor Statistics, Occupational Employment Statistics, National Occupational Employment and Wage Estimates at https://www.bls.gov/oes/current/oes_stru.htm.

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 ICHRA 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 Parts A and B or Part C 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 ICHRA 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 ICHRA are, or will be, enrolled in individual health insurance coverage or Medicare Parts A and B or Part C 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 such Medicare coverage, the date coverage began or will begin, and the name of the provider of the coverage. Additionally, nothing in the final regulations prohibits an ICHRA 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, ICHRAs are not required to use the model attestation. For those ICHRAs that elect to use the model attestation language provided by the Departments, it will further reduce burden for ICHRAs and participants.

Notice Requirement for ICHRA (45 CFR 146.123(c)(6))

An ICHRA is required to provide a written notice to eligible participants. In general, the ICHRA must 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 ICHRA must provide the notice no later than the date on which the ICHRA may first take effect for the participant. However, the Departments encourage the ICHRA to provide the notice as soon as practicable prior to the date the ICHRA may first take effect. If the ICHRA is sponsored by an employer that is established less than 120 days prior to the beginning of the first plan year of the ICHRA, the

notice may be provided no later than the date on which the ICHRA may first take effect for the participant.

The written notice must include certain relevant information, including a description of the terms of the ICHRA, 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 ICHRA; a description of the potential availability of the premium tax credit (PTC) for a participant who opts out of and waives an ICHRA if the ICHRA is not affordable under the PTC rules; a description of the PTC eligibility consequences for a participant who accepts the ICHRA; a statement on how the participant may find assistance for determining their ICHRA 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 ICHRA; 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 ICHRA 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 ICHRA; the date as of which coverage under the ICHRA may first become effective and the date on which the ICHRA 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 ICHRA.

The written notice may include other information, as long as the additional content does not conflict with the required information. The written notice does 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 ICHRA, how the participant may find information to determine whether the ICHRA 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 ICHRA is newly made available. While the Departments hope it will be useful to employers, plan sponsors are not required to use the model language and the final regulations 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 ICHRA plan sponsor, a compensation and benefits manager will need 2 hours (at \$134.10 per hour) and a lawyer will need 1 hour (at \$142.34 per hour) to prepare the notices. The total burden for an ICHRA plan sponsor will be 3 hours with an

equivalent cost of approximately \$411.³ This burden will be incurred the first time the plan sponsor provides an ICHRA. In subsequent years, the burden to update the notice is expected to be minimal and therefore is not estimated. If the ICHRA plan sponsor elects to use the model notice, the burden may be reduced.

HHS estimates that in 2023, approximately 2,911 additional state and local government entities will offer ICHRAs for the first time and will incur a burden of approximately 8,732 hours with an equivalent cost of approximately \$1,194,984. In 2024, approximately 2,911 additional state and local government entities will offer ICHRAs for the first time and will incur a burden of approximately 8,732 hours with an equivalent cost of approximately \$1,194,984. HHS estimates that no additional state and local government entities will offer ICHRAs for the first time in 2025.⁴

TABLE 2: Annual Burden and Costs for Non-Federal Governmental Plan Sponsors Offering ICHRAs Related to the Notice Requirement

Year	Estimated Number of Respondents	Total Number of New ICHRA Plan Sponsors	Estimated Number of Responses	Burden per Response* (hours)	Total Annual Burden* (hours)	Average Labor Rate (\$/hour)	Total Estimated Labor Cost*
2023	8,732	2,911	688,050	3	8,732	\$136.85	\$1,194,984
2024	11,643	2,911	925,894	3	8,732	\$136.85	\$1,194,984
2025	11,643	0	934,388	3	0	\$136.85	\$0
3 year Average	10,673	1,941	849,444	3	5,822	\$136.85	\$796,656

* Burden will only be incurred by new ICHRA plan sponsors.

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 ICHRA must require that the individual notify the ICHRA that coverage has been cancelled

³ The average labor rate will therefore be approximately (\$410.54/3 hours=) \$136.85 per hour.

⁴ Figures based on a simulation model from the U.S. Department of the Treasury, Office of Tax Analysis. Reference: 84 FR 28888, 28965. HHS estimates that approximately 600,000 firms will offer ICHRAs in 2023. The simulation model suggests that approximately 8.1 million individuals will enroll in an ICHRA in 2023. In 2024 and 2025, the simulation model suggests that approximately 800,000 employers will offer ICHRAs, with 10.9 million individuals enrolling in such coverage in 2024 and 11 million individuals enrolling in such coverage in 2025. HHS estimates that there is, on average, 1 dependent for every ICHRA policyholder. HHS also estimates that approximately 1 percent of employers are state and local government entities, accounting for approximately 12 percent of participants.

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.

Notice Requirement for EBHRAs (45 CFR 146.145(b)(3)(viii)(E))

An EBHRA offered by a non-Federal governmental plan sponsor must provide a notice that describes conditions pertaining to eligibility to receive benefits, annual or lifetime caps or other limits on benefits under the plan, and a description or summary of the benefits. This notice must be provided on an annual basis no later than 90 days after the first day of the EBHRA plan year (or, if a participant is not eligible to participate at the beginning of the plan year, no later than 90 days after the employee becomes a participant in the EBHRA).

We assume that each non-Federal governmental plan sponsor that offers an EBHRA has already incurred the initial cost to prepare the notice. In subsequent years, if there are changes in benefits, we estimate that a compensation and benefits manager will need 0.5 hours (at \$134.10 per hour) and a lawyer will need 0.25 hours (at \$142.34 per hour) to update the notice. The total burden for an EBHRA plan sponsor will be 0.75 hours with an equivalent cost of approximately \$103.⁵ If there are no changes in benefits, the burden to update the notice in subsequent years is expected to be minimal and therefore is not estimated.

We estimate that approximately 901 state and local government entities will offer EBHRAs each year.⁶ We further estimate that approximately 10 percent of state and local government entities will make substantive changes to the benefits and the total annual burden will be approximately 68 hours with an equivalent cost of approximately \$9,247.

TABLE 3: Annual Burden and Costs for Non-Federal Governmental Plan Sponsors Offering EBHRAs Related to the Notice Requirement

Estimated Number of Respondents	Estimated Number of Responses	Burden per Response* (hours)	Total Annual Burden* (hours)	Average Labor Rate (\$/hour)	Total Estimated Labor Cost*
901	188,230	0.75	68	\$136.85	\$9,247

* Burden will only be incurred by state and local government entities that make substantive changes to benefits.

13. Capital Costs

ICHRA plan sponsors will provide the notice to eligible participants every year. HHS estimates that ICHRA plan sponsors will provide printed notices to approximately 688,050

⁵ The average labor rate will therefore be approximately (\$102.64/0.75 hours=) \$136.85 per hour.

⁶ HHS assumes that only 1 percent of state and local government entities will offer EBHRAs.

eligible participants⁷ in 2023, 925,894 eligible participants in 2024 and 934,388 eligible participants in 2025. 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 2023, state and local government entities providing ICHRAs will print approximately 316,503 notices at a cost of approximately \$94,951. In 2024, approximately 425,911 notices will be printed at a cost of approximately \$127,773 and in 2025, approximately 429,819 notices will be printed at a cost of approximately \$128,946.

TABLE 4: Annual Capital Costs Related to the Notice Requirement for ICHRAs

Year	Total Number of Respondents	Number of Responses	Cost Per Printed Notice	Total Printing and Materials Cost
2023	8,732	688,050	\$0.30	\$94,951
2024	11,643	925,894	\$0.30	\$127,773
2025	11,643	934,388	\$0.30	\$128,946
3 year Average	10,673	849,444	\$0.30	\$117,223

EBHRAs offered by non-Federal governmental plans will provide the notice to eligible participants every year. We estimate that plan sponsors will provide printed copies of these notices to approximately 188,230 eligible participants annually.⁸ We anticipate that the notices will be approximately 1 page long and the cost of materials and printing will be \$0.05 per notice. We assume that these notices will be provided along with other benefits information with no additional mailing cost. We assume 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, state and local government entities providing EBHRAs to their employees will print approximately 86,586 notices at a cost of approximately \$4,329 annually.

⁷ U.S. Department of the Treasury, Office of Tax Analysis simulation model provides estimates of the number of participants and dependents enrolled in an ICHRA. Number of eligible participants is estimated based on the assumption that 73 percent of eligible participants will enroll in their employers' plans. See Kaiser Family Foundation, "2022 Employer Health Benefits Survey", Section 3, <https://www.kff.org/health-costs/report/2022-employer-health-benefits-survey/>.

⁸ HHS assumes that EBHRAs will be offered to all employees of state and local government entities that offer EBHRAs. This is an upper bound, and the actual number of eligible participants is likely to be lower if EBHRAs are offered to only some employee classes.

TABLE 5: Annual Capital Costs Related to the Notice Requirement for EBHRAs

Total Number of Respondents	Number of Responses	Cost Per Printed Notice	Total Printing and Materials Cost
901	86,586	\$0.05	\$4,329

14. Cost to Federal Government

The cost to the Federal government is on a triennial basis and is associated with the preparation and release of the updated ICR documents. This includes the time it takes the employee to complete the PRA process, draft a FR notice regarding the updated ICR, and post the documents to CMS.gov.

The analysis and preparation of the PRA package and the subsequent release of documents is performed by a CMS employee. The average salary of the employee who would be completing this task, which includes the locality pay adjustment for the area of Washington-Baltimore-Arlington, is listed in the table below.⁹ We estimate that on average it takes a CMS employee 20 hours to perform these activities and the triennial cost to the Federal government will be \$1,395.40.

Employee	Hourly Wage	Number of Hours	Triennial Cost to Government
GS-13, step 10	\$69.77	20	\$1,395.40

15. Changes to Burden

For data collections related to ICHRAs, the total burden for the 3 years decreased to 17,465 hours from 18,049 hours, a total reduction of 584 hours. The decrease in burden is due to a change in the estimated number of employers offering ICHRAs for the first time (from 6,016 employers in total over 3 years to 5,822 employers in total over 3 years).

A new annual burden of 68 hours for the data collections related to EBHRAs (previously included in the information collection approved under OMB Control Number 0938-1375) has been included in this information collection. For the data collections related to EBHRAs, the total burden for the 3 years decreased to 203 hours from 1,487 hours, a total reduction of 1,284 hours. The decrease in burden is due to the assumption that the burden associated with the initial notice preparation has already been incurred in 2020.

⁹ See OPM 2023 General Schedule (GS) Locality Pay Tables, https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/DCB_h.pdf.

As discussed above, CMS will request to discontinue OMB Control Number 0938-1375 as the EBHRA requirements have been merged into this ICR.

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