



PARTNERSHIP FOR EMPLOYER-SPONSORED COVERAGE

December 19, 2018

The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Alexander Acosta
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

The Honorable Alex Azar
Secretary
U.S. Department of Health & Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

RE: REG-136724-17
Submitted via www.regulations.gov

Dear Secretaries Mnuchin, Acosta and Azar:

The Partnership for Employer-Sponsored Coverage (P4ESC) writes with comments regarding the notice of proposed rulemaking (NPRM) entitled Health Reimbursement Arrangements and Other Account-Based Group Health Plans (REG-136724-17) and Notice 2018-88 issued by the U.S. Departments of the Treasury, Labor, and Health and Human Services. The Partnership appreciates the opportunity to meet with Treasury Department officials on November 28, to discuss this proposed rule and other issues pertaining to employer-sponsored health coverage.

The Partnership for Employer-Sponsored Coverage is an advocacy alliance of employment-based organizations and trade associations representing businesses of all sizes and the over 181 million American workers and their families who rely on employer-sponsored coverage every day. We are working to ensure that employer-sponsored coverage is strengthened and remains a viable, affordable option for decades to come.

Employer-sponsored coverage has been the backbone of our nation's health system for over seven decades. Employers of all sizes contribute vast resources to their employees and families through the employer-sponsored system. As the payer of coverage, employers have a vested interest in health care quality, value, and system viability. Employers have been on the leading edge of health delivery innovation and modeling for decades.

Employer-Sponsored Coverage Options

Benefits offerings and coverage plans in the employer-sponsored system are as diverse as employers themselves. There is no one-size-fits-all employer plan. A larger employer who offers self-insured coverage – which comes with the most financial risk but has the benefit of being able to be tailored for their workforce's specific needs – is considerably different from a smaller or midsize employer who offers fully-insured coverage – which faces fiscal pressures of the individual and small group market without the ability to tailor coverage.

Consumer directed health products (CDHPs), such as health reimbursement arrangements (HRAs), provide employers of all sizes with flexible coverage options for their employees and families. The Partnership



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appreciates the Departments' recognition that CDHPs are an important option at an employer's disposal. Providing employers the option of offering an HRA for the purchase of individual health coverage (IHC) may help small employers who would otherwise be unable to provide coverage of any kind to their employees. Additionally, permitting employers to offer an HRA for excepted benefits coverage would provide employees with additional financial assistance for services such as dental and vision.

Administrative Compliance

The foundation of the employer-sponsored coverage system is rooted in workforce policy and business operations. Employers of all sizes offer coverage for employee recruitment and retention. The functionality of a business is centered around a productive, thriving and healthy workforce. The ability to offer coverage to employees and the ability to operate a business for its core purpose are not mutually exclusive functions. An employer offer of coverage is not merely a transaction in which an employee fills out paperwork, enrolls in coverage, and receives an insurance card – it is a multifaceted fiscal and operational commitment at the core of a business.

As employers are making the decision to offer coverage and determine which type of coverage to offer to their employees, a critical aspect of this deliberation is the administrative compliance costs and complexities associated with coverage. The Partnership appreciates the Departments' intent to utilize the three affordability safe harbors under 4980H, the Affordable Care Act's (ACA) employer mandate, to calculate the affordability of an HRA for IHC purchase. Many members of the Partnership worked directly with Treasury and the Internal Revenue Service (IRS) in formulating these affordability safe harbors under the ACA and appreciate the proposed rule's important recognition that employers do not know, and should not know, an employee's household income for the purpose of calculating its affordability test requirements under the ACA. In addition, the Partnership appreciates the Departments' recognition that many employers have a non-calendar year plan year and that it is the intent to include a non-calendar year coverage safe harbor in final rules.

The Partnership welcomes that the proposed rule defines eight classes of employees to which an employer can offer HRAs for IHC purchase. Associated Builders and Contractors, a member of the Partnership, urges the Department to consider expanding the proposed classes of employees to include field employees (craft workers and laborers), whose employment often depends on the uncertain duration of a project. Distinguishing field employees from office staff would provide the flexibility necessary to increase the use of HRAs.

The Partnership remains concerned about the level of complexity, costs and burdens that may be associated with the verification and notification processes referenced in the proposed rule regarding the offer of an HRA for IHC purchase. The current ACA 6055 and 6056 reporting burdens loom large over employers and any additional burdens resulting from a new verification and notification process under the proposed rule may deter employers from offering coverage all together.

Specifically, the Partnership is concerned that a requirement to contact individual coverage issuers for enrollment verification for each employee would be too time consuming and overwhelming for even the smallest employer. We are also concerned that requiring an employer to seek a monthly self-attestation from each employee to verify enrollment in individual coverage would be equally time consuming and overwhelming. Further, the Partnership is concerned that an employer would be held liable for inaccurate attestation by an employee which may subject the employer to tax penalties under 4980H of the ACA.



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Further, the Partnership recommends the Departments provide employers with a model template and sample language for a notice to employees, regarding the offer of an HRA for IHC purchase, about the opt-out process and potential ineligibility for a premium tax credit (PTC) under an insurance Exchange. There remains much public confusion about the current PTC eligibility process and the two different definitions of “affordability” under the ACA – one for the purpose of PTC eligibility and one for the purpose of an ALE’s compliance with 4980H.

The Partnership appreciates the recognition in the proposed rule that the notice should contain information directed to the class of employees to which the offer of an HRA for IHC purchase is made and not unique to each individual employee. The Partnership associates itself with the more detailed comments about the verification and notification processes contained in the comment letter from the National Association of Health Underwriters, a member of the Partnership. We welcome the opportunity to further discuss operational processes and procedures important to employers of all sizes with the Departments.

Conclusion:

The Partnership for Employer-Sponsored Coverage appreciates the opportunity to work with the Administration, Congress and the broader stakeholder community in a bipartisan manner on reforms to our nation’s health care system to ensure that employer-sponsored coverage is preserved and thrives for generations of hardworking Americans to come. As a coalition representing businesses of all sizes, we have the unique ability to provide operational input across the full spectrum of the employer system – from the smallest family business to the largest corporation. Employers have a great stake in the development and implementation of health care policies and we look forward to working with you as this process continues.

Sincerely,
Partnership for Employer-Sponsored Coverage

The Partnership for Employer-Sponsored Coverage (www.p4esc.org) membership includes: American Hotel & Lodging Association, American Rental Association, American Staffing Association, Associated Builders and Contractors, Inc., Auto Care Association, HR Policy Association, International Franchise Association, National Association of Health Underwriters, National Association of Wholesaler-Distributors, National Restaurant Association, National Retail Federation, Retail Industry Leaders Association, Society of American Florists, Society for Human Resource Management

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