



441 G St. N.W.  
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July 3, 2019

The Honorable Lamar Alexander  
Chairman  
The Honorable Patty Murray  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
United States Senate

The Honorable Chuck Grassley  
Chairman  
The Honorable Ron Wyden  
Ranking Member  
Committee on Finance  
United States Senate

The Honorable Robert C. "Bobby" Scott  
Chairman  
The Honorable Virginia Foxx  
Ranking Member  
Committee on Education and Labor  
House of Representatives

The Honorable Frank Pallone, Jr.  
Chairman  
The Honorable Greg Walden  
Ranking Member  
Committee on Energy and Commerce  
House of Representatives

The Honorable Richard Neal  
Chairman  
The Honorable Kevin Brady  
Ranking Member  
Committee on Ways and Means  
House of Representatives

Subject: *Department of the Treasury, Internal Revenue Service; Department of Labor,  
Employee Benefits Security Administration; Department of Health and Human Services:  
Health Reimbursement Arrangements and Other Account-Based Group Health Plans*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Treasury, Internal Revenue Service (IRS); Department of

Labor (DOL), Employee Benefits Security Administration (ERISA); and Department of Health and Human Services (HHS) entitled "Health Reimbursement Arrangements and other Account-Based Group Health Plans" (RINs: 1545-BO46; 1210-AB87; 0938-AT90). We received the rule from DOL on June 14, 2019, and IRS on June 17, 2019. It was published in the *Federal Register* as a final rule on June 20, 2019. 84 Fed. Reg. 28888. The effective date of the rule is August 19, 2019.

The final rules make changes to rules under various provisions of the Public Health Service Act (PHS Act), the Employee Retirement Income Security Act (ERISA Act), and the Internal Revenue Code (Code) regarding health reimbursement arrangements (HRAs) and other account-based group health plans. Specifically, the final rules allow integrating HRAs and other account-based group health plans with individual health insurance coverage or Medicare, if certain conditions are satisfied (an individual coverage HRA). The final rules also set forth conditions under which certain HRAs and other account-based group health plans will be recognized as limited excepted benefits. Also, Treasury and IRS are finalizing rules regarding premium tax credit (PTC) eligibility for individuals offered an individual coverage HRA. In addition, ERISA is finalizing a clarification to provide assurance that the individual health insurance coverage for which premiums are reimbursed by an individual coverage HRA or a qualified small employer health reimbursement arrangement (QSEHRA) does not become part of an ERISA plan, provided certain safe harbor conditions are satisfied. Finally, according to HHS, the final rule provides a special enrollment period in the individual market for individuals who newly gain access to an individual coverage HRA or who are newly provided a QSEHRA.

Enclosed is our assessment of the agencies' compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Martin V. Franks  
Chief, Publications and Regulations Branch  
Department of the Treasury

Preston Rutledge  
Assistant Director, Employee Benefits  
Security Administration  
Department of Labor

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE;  
DEPARTMENT OF LABOR,  
EMPLOYEE BENEFITS SECURITY ADMINISTRATION;  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
ENTITLED  
“HEALTH REIMBURSEMENT ARRANGEMENTS  
AND OTHER ACCOUNT-BASED GROUP HEALTH PLANS”  
(RINs: 1545-BO46; 1210-AB87; 0938-AT90)

(i) Cost-benefit analysis

The Department of the Treasury, Internal Revenue Service (IRS); Department of Labor, Employee Benefits Security Administration (ERISA); and Department of Health and Human Services (HHS) (hereinafter the Departments) summarized the costs and benefits of the final rule. In regard to costs, the Departments determined that the qualitative costs include: loss of health insurance and potentially poorer financial and health outcomes for some individuals who experience premium increases; less comprehensive coverage and fewer health benefits for some individuals with individual health insurance coverage as compared to traditional group health plan coverage; and administrative costs for employers, employees, and government agencies to learn about and/or use a new health benefits option. Additionally, the Departments estimate revenue losses for the federal government to be \$4.5 billion at a discount rate of 7 percent and \$4.9 billion at a discount rate of 3 percent between years 2020-2029.

Regarding benefits, the Departments found that the benefits of the final rule include: gain of health insurance coverage and potentially improved financial or health outcomes for some employees who are newly offered or newly accept benefits; increased choice and flexibility for employees and employers around compensation arrangements, potentially resulting in more efficient use of healthcare and more efficient labor markets; and decreased administrative costs for some employers who no longer offer traditional group health plans for some, or all, employees.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

The Departments stated that they do not expect the final rule to produce costs or benefits in excess of 3 to 5 percent of revenues for small entities. Additionally, the Departments determined that the final rule will not have a direct effect on small rural hospitals.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The Departments determined that the final rule does not include any federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector, in excess of \$154 million.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551*et seq.*

On October 29, 2018, the Departments published a proposed rule. 83 Fed. Reg. 54420. IRS, ERISA, and HHS received comments and responded to comments in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

The Departments reported information collection requests associated with this rule. The first regarding “Substantiation of Individual Health Insurance Coverage” was submitted to the Office of Management and Budget (OMB), according to the Departments, in conjunction with the final rule. The second, regarding “Notice Requirement for Individual Coverage” has been submitted to OMB according to the Departments. The third regarding “Notification of Termination of Coverage” has been submitted to OMB according to the Departments. The fourth regarding “Special Rule for Excepted Benefit health reimbursement arrangements (HRAs)” is not subject to PRA according to the Departments because it will affect fewer than 10 entities. Finally, the fifth regarding “special enrollment periods (SEPs)” will result in an average burden over 3 years of 530,000 hours and an equivalent cost of \$25,800,400 per year.

Statutory authorization for the rule

The Departments stated that this rule was promulgated pursuant to 26 U.S.C. §§ 7805 and 9833; 29 U.S.C. §§ 1002, 1135, 1182, 1185d, 1191a, 1191b, and 1191c; Secretary of Labor’s Order 1-2011; 42 U.S.C. §§ 300gg-300gg-63, 300gg-91, 300gg-92, 300gg-94, 13031, and 18041.

Executive Order No. 12,866 (Regulatory Planning and Review)

The Departments determined that this final rule will have an economic impact of \$100 million or more in at least one year, and meets the definition of a significant rule under the Order. The Departments stated that they provided an assessment of the potential costs, benefits, and transfers associated with the final rules.

Executive Order No. 13,132 (Federalism)

The Departments stated that federal officials discussed issues related to implementation of the policies in the final rule with state regulatory officials. The Departments also stated that over multiple individual and group conversations, federal and state officials shared information about how and when Exchange systems and processes could be updated to support implementation of individual coverage HRAs while minimizing burden and confusion for both employers and consumers.