



December 28, 2018

Kirsten Wielobob  
Deputy Commissioner for Services and Enforcement  
CC:PA:LPD:PR (REG-136724-17),  
Courier's Desk,  
Internal Revenue Service,  
1111 Constitution Avenue NW,  
Washington, DC 20224

Re: Health Reimbursement Arrangements and Other Account-Based Group Health Plans (REG-136724-17)

Dear Deputy Commissioner Wielobob,

The American College of Physicians (ACP) appreciates the opportunity to comment on the Health Reimbursement Arrangements and Other Account-Based Group Health Plans proposed rule. ACP is the largest medical specialty organization and the second-largest physician group in the United States. ACP members include 154,000 internal medicine physicians (internists), related subspecialists, and medical students. Internal medicine physicians are specialists who apply scientific knowledge and clinical expertise to the diagnosis, treatment, and compassionate care of adults across the spectrum from health to complex illness.

ACP strongly supports efforts to strengthen the health insurance marketplaces and facilitate access to Affordable Care Act (ACA)-compliant qualified health plans. Persons seeking marketplace-based coverage may choose from an array of coverage levels. These range from high-premium, low-deductible Gold-tier plans to low-premium, high-deductible Bronze plans which only cover the essential health benefit package. All marketplace-based plans are prohibited from applying pre-existing condition exclusions and annual and lifetime dollar limits, among other requirements. ACP believes that consumer-directed health care plans, like certain Health Reimbursement Arrangements, can exist as an option as long as they are offered alongside comprehensive, low-deductible coverage. The College has expressed strong opposition to proposals that would permit the sale of plans that do not meet the law's insurance regulations and consumer and patient protections, including Association Health Plans and short-term, limited duration plans.

ACP policy recommends that extensive safeguards be established to prevent erosion of coverage already available in the workplace and warns against policies that create new gaps in coverage by encouraging employers to terminate existing employee health benefits. The changes outlined in the proposed rule on integrated Health Reimbursement Arrangements for individual market insurance could be beneficial in cases where an employer has not offered coverage but wants to help offset their employees' costs associated with purchasing a marketplace-based, ACA-compliant qualified health plan. Under favorable conditions, this could increase marketplace enrollment, balance the risk pool, and reduce premiums. ACP is very concerned that without strong nondiscrimination protections, some employers will offer HRAs as a means to move complex-need employees into the individual market and maintain group coverage for healthy employees. The proposal as written may cause large employers with an older, sicker workforce to drop group coverage in favor of an integrated HRA, directing high-risk workers to the age-rated individual insurance market (i). Further, a drastic coverage change would force employees to navigate an unfamiliar individual insurance marketplace and undermine access to preferred physicians and other health professionals. This is particularly concerning in an environment where navigator outreach and education funding has decreased and narrow physician network plan availability has increased among marketplace-based plans (ii,iii).

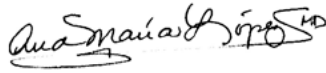
If finalized, HRAs integrated with individual health insurance coverage should only be connected to qualified health plans. ACP is very concerned that the sale of extended short-term, limited duration plans, Association Health Plans, and other ACA-noncompliant products could cause adverse selection in the health insurance marketplace, leading to higher premiums, and expose enrollees to high medical costs for services that are not covered. HRAs should not be used to fund short-term, limited duration plans or other offerings that do not meet ACA requirements.

The proposed rule notes that possible costs include "loss of health insurance and potentially poorer financial or health outcomes for some individuals who experience premium increases." If this policy is finalized, agencies should continue to monitor the use of HRAs to determine their effect on access to health insurance for people with existing health problems and people with low and moderate incomes. The effect such plans have on the ability of vulnerable populations to obtain health insurance and access to health care services should also be monitored to ensure that such groups are not harmed.

ACP is very concerned that the proposed rule would result in employers engaging in discriminatory tactics by shifting sick, vulnerable employees who rely on employer-sponsored group insurance to the individual health insurance marketplace, leading to higher premiums and less market stability. ACP urges the agencies delay finalizing the proposed rule until its potential effects are better understood. Should the agency proceed with the proposal we urge

adoption of additional robust safeguards to prevent employers from selectively offering HRAs to sicker, higher-cost employees.

Sincerely,



Ana María López, MD, MPH, MACP  
President  
American College of Physicians

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<sup>i</sup> Young CL, Levitis JA, Fiedler M. Evaluating the Administration’s Health Reimbursement Arrangement Proposal. USC-Brookings Schaeffer Initiative for Health Policy. December 2018. Accessed at [https://www.brookings.edu/wp-content/uploads/2018/12/Linke-Young\\_Levitis\\_Fiedler\\_HRA-paper\\_12.11.18.pdf](https://www.brookings.edu/wp-content/uploads/2018/12/Linke-Young_Levitis_Fiedler_HRA-paper_12.11.18.pdf)

<sup>ii</sup> Pollitz K, Tolbert J, Diaz M. Data Note: Further Reductions in Navigator Funding for Federal Marketplace states. September 24, 2018. Accessed at <https://www.kff.org/health-reform/issue-brief/data-note-further-reductions-in-navigator-funding-for-federal-marketplace-states/>

<sup>iii</sup> Carpenter E and Sloan C. Health Plans with More Restrictive Provider Networks Continue to Dominate the Exchange Market. Avalere. December 4, 2018. Accessed at <https://avalere.com/press-releases/health-plans-with-more-restrictive-provider-networks-continue-to-dominate-the-exchange-market>