



July 22, 2019

Office of Management and Budget, Office of Information and Regulatory Affairs
Attention: CMS Desk Officer
725 17th St NW
Washington, D.C. 20503

Re: Comments on the Individual Coverage HRA Model Notice, CMS-9918-F (CMS-10740, OMB control number 0938-1361 (HHS))

To Whom It May Concern:

The District of Columbia Health Benefit Exchange Authority (HBX) appreciates your consideration of our comments to the Individual Coverage HRA Model Notice, CMS-10740.

By way of background, HBX is a private-public partnership established by the District of Columbia (District) to develop and operate the District's on-line health insurance marketplace, DC Health Link (DCHealthLink.com). We cover approximately 100,000 people -- District residents and people who work for District small businesses. DC Health Link fosters competition and transparency in the private health insurance market, enabling individuals and small businesses to compare health insurance prices and benefits and to purchase affordable, quality health insurance. Since we opened for business, we've cut the uninsured rate by 50% and now more than 96% of District residents have health coverage.

HBX supports a Model Notice from employers offering an Individual Coverage HRA to educate their workers.¹ However, the recently issued Individual Coverage HRA Model Notice² is difficult to understand and misleading.

As proposed, the Model Notice's readability is college level at 13.4.³ We recommend simplifying and clarifying the model. We are attaching for your consideration changes in track-mode and with

¹ Note that HBX has previously commented on the potential risk and harm that the Individual Coverage HRA may have on individual markets and to consumers. See Comment Letter from Mila Kofman, Executive Director, DC Health Benefit Exchange Authority to the Dept. of Treasury on HRAs and Other Account Based Group Health Plans – Reg 136724-17, Dec. 28, 2018, https://hbx.dc.gov/sites/default/files/dc/sites/hbx/publication/attachments/DC_HBX_Comments_CMS_9918-P.PDF.

² CMS Form Number CMS-10704, June 14, 2019, <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing-Items/CMS-10704.html?DLPage=1&DLEntries=10&DLSort=1&DLSortDir=descending>.

³ See Readability Statistics for the Model Notice, specifically the Flesch Reading Ease (37.9) and Flesch-Kincaid Grade Level (13.4).



comments. If you accept our suggested changes, the notice achieves a readability grade level of 11.2. This is still much higher than ideal to ensure that all workers understand their rights. We recommend working with consumer experts on readability to achieve an 8th grade reading level, which will ensure that most people will be able to understand the decision they are being asked to make.

In addition to being complicated, as drafted the Model Notice is misleading. The first page of the Model Notice states:

“...You’ll need to refer to it if you decide to accept the HRA and enroll in individual health insurance coverage, or if you turn down the HRA and claim the premium tax credit on your federal income tax return.”

This statement implies that an employee with an offer of an Individual Coverage HRA has a choice between the Individual Coverage HRA and a premium tax credit. The employee may not read the 5th page (in a 6 page notice) about affordability – the proposed notice has the relevant information on page 5 -- to understand that he/she is not eligible for premium tax credits if the Individual Coverage HRA is affordable. Consequently, an employee may incorrectly choose premium tax credits when they are ineligible and unknowingly incur a tax liability. And, in this case because the employee declined the Individual Coverage HRA, there would be no premium reductions. Our suggested changes are one of many ways to address this.

Thank you for considering our comments.

Sincerely,



Mila Kofman
Executive Director
DC Health Benefit Exchange Authority

Individual Coverage HRA Model Notice

Instructions for the Individual Coverage HRA

The Departments of the Treasury, Labor, and Health and Human Services (the Departments) have issued final regulations allowing plan sponsors to offer individual coverage health reimbursement arrangements (HRAs), subject to certain requirements.¹ Among these requirements, an individual coverage HRA must provide a written notice to all employees (including former employees) who are eligible for the individual coverage HRA. The final regulations explain the requirements for the notice.²

Individual coverage HRAs may use this model notice to satisfy the notice requirement. To use this model notice properly, the HRA must provide information specific to the HRA (indicated with *italicized* prompts in brackets). The HRA may modify the notice based on the terms of the particular HRA. For example, if the HRA does not cover family members, the notice need not include references to family members. The use of the model notice is not required, but the Departments consider use of the model notice, when provided timely, to be good faith compliance with the notice requirement.

NOTE: Individual coverage HRAs should *not* include this instructions page with the individual coverage HRA model notice provided to participants.

Paperwork Reduction Act Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The Departments are seeking OMB approval for the model notice as part of the approval for OMB control numbers 1210-0160 (DOL); 1545-0123, 1545-0074 and 1545-0047 (Treasury/IRS); and 0938-1361 (HHS). The burden related to the model notice has been accounted for in the PRA sections of the related final rule which published at XX FR XXXX.

¹ See 26 CFR 54.9802-4, 29 CFR 2590.702-2, and 45 CFR 146.123.

² For information on when the notice must be provided, see 26 CFR 54.9802-4(c)(6)(i), 29 CFR 2590.702-2(c)(6)(i) and 45 CFR 147.123(c)(6)(i). For the required contents for the notice, see 26 CFR 54.9802-4(c)(6)(ii), 29 CFR 2590.702-2(c)(6)(ii) and 45 CFR 147.123(c)(6)(ii). The notice must include a description of each item listed in the regulations and may include any additional information that does not conflict with the required information.

Individual Coverage HRA Model Notice

USE THIS NOTICE WHEN APPLYING FOR INDIVIDUAL HEALTH INSURANCE COVERAGE

[Enter date of notice]

~~Your~~ You are getting this notice because your employer is offering you an individual coverage health reimbursement arrangement (HRA). An HRA lets you purchase health insurance on your own and get reimbursed for some of the premium you pay. This notice has important information about your rights.

Please read this notice **before** you decide whether to accept the HRA. If the HRA is not affordable, you can opt out of this HRA and get In some circumstances, your decision could affect your eligibility for the premium tax credit. Accepting the individual coverage HRA and improperly claiming the premium tax credits to lower your monthly premiums. Lower monthly premiums are available to you through Exchanges credit could result in tax liability.

~~This notice also has important information that the Exchange (known in many states as the "Health Insurance Marketplace").) will need to determine if you are eligible for advance payments of the premium tax credit. An Exchange operates in each state to help individuals and families shop for and enroll in individual health insurance, and will determine if you are eligible for reduced monthly premiums. The Exchange will help you figure out if the HRA is considered unaffordable. You will need this notice if you apply for the premium tax credit. -coverage-~~

You ~~will~~ may also need this notice to ~~show~~ verify that you are eligible for a special enrollment period. A special enrollment period allows you to enroll in individual health insurance coverage outside of the annual open enrollment period. in the individual market.

Commented [KM(1)]: As drafted, the readability grade level for this notice is 13.4. If accepted, the proposed changes make the readability grade level 11.2.

I. The Basics

What should I do with this notice?

Read this notice to help you decide if you want to accept the HRA. You will also need this notice to see if you qualify for premium tax credits. Finally, keep this notice for your records.

Also, keep this notice for your records. You'll need to refer to it if you decide to accept the HRA and enroll in individual health insurance coverage, or if you turn down the HRA and claim the premium tax credit on your federal income tax return.

Commented [KM(2)]: This statement without clarification is misleading. This may result in some people believing that they don't need to read the rest of the notice because they know they want APTC and believe they can continue getting APTC.

What's an individual coverage HRA?

An individual coverage HRA is ~~set up by an arrangement under which your employer to reimburse~~ reimburses you for your medical care expenses (and premiums for individual health insurance. Sometimes an HRA will cover sometimes your family's family members' medical care expenses too. Your employer sets the), up to a certain dollar amount to make available to you. To use it, you (and any family members) for the plan year. If you enroll in an individual coverage

HRA, you must also be enrolled in one of the following:

- Individual health insurance coverage;
- ~~of Medicare Part A (Hospital Insurance) and B (Medical Insurance);~~ or
- Medicare Part C (Medicare Advantage).

~~Not all) (collectively referred to in this notice as Medicare) for each month you are covered by the HRA. If your family members are covered by the HRA, they must also be enrolled in individual health insurance that qualifies for reimbursement. For example, short-term, limited-duration insurance (also called short term plans) and "excepted benefits" such as dental and vision care insurance does not qualify for reimbursement coverage or Medicare for each month they are covered by the HRA. [Explain where the participant can find information on which medical care expenses are reimbursed by the HRA.]~~

~~The individual coverage HRA you are being offered is employer-sponsored health coverage. This is important to know if you apply for health insurance coverage on the Exchange.~~

Note: There are different ~~types~~ kinds of HRAs. ~~Your~~ The HRA that's being referred to throughout this notice, and that your employer is offering you, is an **individual coverage HRA**. It is not a qualified small employer health reimbursement arrangement (QSEHRA) or any other type of HRA.

What are the **basic terms** of the individual coverage HRA that my employer is offering?

[Add general description of the HRA, including the following specific information:]

(1) ~~Your employer offers up to~~ The maximum dollar amount available for each participant in the HRA is [insert dollar amount(s) and describe applicable terms for any variation based on family size or age]. [NOTE: If the HRA varies amounts based on family size, add the following: **Your** Note that the **self-only HRA amount** available for the plan year, which is the amount you should tell the Exchange is available to you, is [insert dollar amount(s) and describe any applicable variation based on age]. If you apply for reduced premiums for individual health insurance coverage through the Exchange, this is the amount you should give to the Exchange. ~~Do not will~~ use higher amounts available for couples or families. ~~to figure out if your HRA is considered affordable.~~ [Add any rules regarding the proration of the maximum dollar amount that applies to any participant (or dependent, if applicable) who is not eligible to participate in the HRA for the entire plan year].

(2) Your family members [insert are/aren't] eligible for the HRA. [Revise as needed if some, but not all, family members are eligible.]

(3) In general, your HRA coverage will start [insert date plan year begins]. However, if you become eligible for the HRA less than 90 days before the ~~HRA starts~~ beginning of the plan year or during the plan year, your HRA coverage will start [insert explanation of earliest date coverage could start and the latest date HRA coverage could start and other information about the enrollment procedures, and applicable timing, for these employees.]

(4) The HRA plan year begins on [insert date] and ends on [insert date].

(5) ~~Your employer~~ Amounts newly made available under the HRA will make new HRA amounts be made available on [insert date(s)].

Note: You will need this information if you apply for premium reductions for health

insurance coverage through the Exchange.

Can I opt out of the individual coverage HRA?

Yes. You can opt out of the HRA ~~for yourself (and your family members, if applicable).~~
[Insert information on how and when participants may opt out.]

Important: If the HRA is “unaffordable”, you must opt-out to qualify for reduced premiums for health insurance through the Exchange. Qualification for reduced premiums depends on your income. If you do not opt out of the HRA, you will not qualify for reduced premiums even if you meet income requirements.

[Add statement as to whether, upon termination of employment, the participant’s HRA is forfeited or the participant is given the chance to opt out at that time.]

If I accept the individual coverage HRA do I need to be enrolled in other health coverage too?

Yes. You (and your family members, if applicable) must be enrolled in individual health insurance coverage or Medicare for each month you (or your family members) are covered by the HRA. You may not enroll in short-term, limited-duration insurance or only in excepted benefits coverage (such as insurance that only provides benefits for dental and vision care) to meet this requirement.

II. Getting Individual Health Insurance Coverage

How can I get individual health insurance coverage?

If you already have individual health insurance coverage, you do not need to change ~~anything. That~~ coverage ~~meets to meet~~ the HRA’s health coverage requirement.

~~If you don’t already have individual health insurance coverage, you can enroll in coverage through the Exchange or outside of the Exchange—for example, directly from an insurance company.~~

~~**Note:** People in most states use HealthCare.gov to enroll in coverage through the Exchange, but some states have their own Exchange. To learn more about the Exchange in your state, visit <https://www.healthcare.gov/marketplace-in-your-state/>.~~

~~If you are enrolled in Medicare Part A and B or Medicare Part C, you do not need to change anything. That coverage meets your enrollment in Medicare will meet~~ the HRA’s health coverage requirement. For information on how to enroll in Medicare, visit www.medicare.gov/sign-up-change-plans.

~~If you need to sign up for health insurance, you can shop, compare and enroll through the Exchange. Visit <https://www.healthcare.gov/marketplace-in-your-state/> to find your state’s Exchange. You may also enroll directly with an insurance company depending on where you live.~~

When can I enroll in individual health insurance coverage?

~~Generally, anyone can enroll in or change their individual health insurance coverage during the individual market’s annual open enrollment period from November 1 through December 15. (Some state Exchanges may provide additional time to enroll.) If your individual coverage HRA starts on January 1, you (and your family members, if applicable), generally should enroll in~~

individual health insurance coverage during open enrollment. Open enrollment usually runs from November 1 through December 15. Many state Exchanges have longer open enrollment periods.

~~If in certain circumstances, such as when your individual coverage HRA starts on a date other than January 1 or if you are newly hired during the HRA plan year, you (and your family members, if applicable) can enroll in individual health insurance coverage outside of open enrollment, you may qualify for using a special enrollment period. A special enrollment period lets you sign up for health insurance coverage outside of open enrollment.~~

If you qualify for a special enrollment period, make sure you enroll on time:

- ~~• If your employer is offering you an are newly eligible for HRA for coverage that would start at the first time beginning of the HRA plan year, you generally have need to enroll in individual health insurance coverage within the 60 days before the start of the HRA to enroll in individual health insurance.~~
- ~~• If you are starting your HRA in the middle first day of the HRA plan year-~~
- ~~• If the HRA was not required to provide this notice 90 days before the beginning of the plan year, or you are newly eligible for HRA coverage that would start mid-plan year (for example, because you are a new employee) or your employer didn't tell you about the HRA 90 days before it started, you have), you may enroll in individual health insurance coverage up to 60 days before and the first day that your HRA can start or up to 60 days after your HRA starts to enroll in individual health insurance coverage this date. Enroll in individual health insurance coverage as soon as possible to get the most out of your individual coverage HRA.~~

Note: If you enroll in individual health insurance coverage through this special enrollment period, you may need to prove that you qualify. You can submit a copy of this notice to the Exchange or the insurance company. ~~to prove that you qualify to enroll outside of the open enrollment period.~~ For more information on special enrollment periods, visit [HealthCare.gov](https://www.healthcare.gov) or <https://www.healthcare.gov/marketplace-in-your-state/> to find your state's ~~the website for the Exchange in your state.~~

Do I need to ~~get new~~ have individual health insurance coverage each year if I want to enroll in my individual coverage HRA each year?

Yes. You must be enrolled in individual health insurance coverage. Individual coverage works on is typically sold for a 12-month period that is the same as the calendar year — January 1 through and ends on December 31. It automatically renews so you do not have to reenroll if you like what you have.

- ~~• If your HRA starts on January 1 and you do not have individual health insurance, you will either need to get new individual health insurance coverage to start January 1.~~
- ~~• or re-enroll in your individual health insurance coverage.~~ If your HRA has a plan year that starts on a day other than January 1, because your individual health insurance coverage will stay in effect until December 31, you do not need to get new individual health insurance coverage.

If your HRA has a plan year that starts on a day other than January 1 and you do

Commented [KM(3): You don't need NEW coverage every year. Question is confusing.

- not ~~haveneed to get new~~ individual health insurance, you need to coverage or re-enroll until the next open enrollment period.

If you are enrolled in Medicare, your Medicare automatically renews. ~~[Add exceptions if applicable.] coverage generally will remain in place year to year.~~

Do I need to substantiate my (and my family member’s) enrollment in individual health insurance coverage or Medicare to the individual coverage HRA?

Yes. You must provide proof~~substantiate~~ that you are or (and your family members, if applicable)~~will be enrolled in individual health insurance (and your family members, if applicable) coverage~~ or Medicare for the period you will be covered by the HRA. ~~[Add description of when the HRA requires this substantiation to be provided and to whom it should be provided.]]~~

Also, each time you seek reimbursement of a medical care expense from the HRA, you must substantiate that you had (or have) (or the family member whose medical care expense you are seeking reimbursement for, if applicable had (or has))~~))~~ individual health insurance coverage or Medicare for the month during which the expense was incurred.

~~[Add description of the reasonable substantiation procedures established or provide information on where to find information about those procedures.]~~

What happens if I am (or one of my family members is) no longer enrolled in individual health insurance coverage or Medicare?

If you (or a family member, if applicable) are no longer enrolled in individual health insurance coverage or Medicare, the HRA won’t reimburse you for medical care expenses that were incurred during a month when you (or your family member, as applicable) did not have individual health insurance coverage or Medicare. ~~This means that you may not seek reimbursement for medical care expenses incurred when you (or your family member, if applicable) did not have individual health insurance coverage or Medicare.~~

Note: You must report to the HRA if your (or your family member’s) individual health insurance coverage or Medicare has been terminated retroactively and the effective date of the termination.

III. Information About the Premium Tax Credit

What is the premium tax credit?

The premium tax credit ~~is a tax credit that helps eligible~~ individuals and their families pay their premiums for health insurance coverage. ~~It is only for~~ coverage purchased through the Exchange. The premium tax credit is not available for health insurance coverage purchased outside of the Exchange.

~~Factors that affect premium tax credit eligibility include enrollment in Exchange coverage, eligibility for other types of coverage, and household income.~~

When you enroll in health insurance coverage through the Exchange, the Exchange will ask you about any coverage offered to you by your employer. This includes HRAs. ~~You will not qualify for, including through an HRA. Your ability to claim the premium tax credit may be limited if your employer offers you coverage, including an affordable HRA.~~

The Exchange also will determine whether you are eligible for advance payments of the premium tax credit, which are amounts paid directly to your insurance company to lower the cost of your monthly premiums. For more information about the premium tax credit,

including advance payments of the premium tax credit and ~~premium tax credit~~ eligibility requirements, see [irs.gov/aca](https://www.irs.gov/aca).

If I accept the individual coverage HRA, can I claim the premium tax credit for my Exchange coverage?

No. You may not claim the premium tax credit for your Exchange coverage for any month you are covered by the HRA. Also, you may not claim the premium tax credit for the Exchange coverage of any family members for any month they are covered by the HRA.

If I opt out of the individual coverage HRA, can I claim the premium tax credit for my Exchange coverage?

~~Yes. It depends.~~

- ~~• If you opt out of the HRA, you can get and the premium tax credit if: HRA is considered unaffordable AND~~
- ~~• You income qualifies AND~~
- ~~• You enroll you may claim the premium tax credit for yourself and any family members enrolled in Exchange coverage, if you are otherwise eligible.~~

If you opt out of the HRA and the HRA is considered **affordable**, you ~~will~~**may not be eligible to claim** the premium tax credit for yourself or any family members.

If you are a former employee, ~~you can get the offer of an HRA will not prevent you from claiming~~ the premium tax credit. ~~It does not matter (if you are otherwise eligible for it), regardless of~~ whether the HRA is considered affordable. ~~But and as long as~~ you **must opt out of** ~~don't accept~~ the HRA ~~if you want the premium tax credit.~~

How do I know if the individual coverage HRA ~~is~~ve been offered is considered affordable?

~~HealthCare.gov or your state's~~The Exchange ~~can help you figure out whether your HRA is affordable. Your website will need provide the information in this notice, on how to determine affordability for your individual coverage HRA.~~ To find your state's Exchange, ~~go to visit:~~ <https://www.healthcare.gov/marketplace-in-your-state/>.

Do I need to provide any of the information in this notice to the Exchange when applying for premium reductions?

Yes. ~~You'll~~Be sure to have this notice with you when you apply for coverage on the Exchange. ~~If you're applying for advance payments of the premium tax credit, you'll~~ need to provide ~~the~~ information from the answer to "What are the basic terms of the individual coverage HRA in this notice my employer is offering?" on page [page number]. You will also need to tell the Exchange whether you are a current employee or former employee.

If I'm enrolled in Medicare, am I eligible for the premium tax credit?

No. If you have Medicare, you aren't eligible for the premium tax credit ~~for any Exchange coverage you may have.~~

IV. Other Information You Should Know

Who can I contact if I have questions about the individual coverage HRA?

Contact: [Add contact information (including a phone number) for an individual or a group of individuals who participants may contact in order to receive additional information regarding

the HRA.]

[For use by an HRA subject to ERISA that meets the safe harbor set forth in 29 CFR 2510.3-1(l)]

Is the individual health insurance coverage I pay for with my individual coverage HRA subject to ERISA?

~~No. The individual health insurance coverage that is paid for with amounts from your individual coverage HRA, if any, is not subject to the rules and consumer protections of the Employee Retirement Income Security Act (ERISA). You should contact your state insurance department for more information regarding your rights and responsibilities if you purchase individual health insurance coverage.~~