HRA Council
Jack Hooper, Board Chair
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June 3, 2022

Charles P. Rettig
Commissioner
Internal Revenue Service
Department of the Treasury
111 Constitution Avenue, NW
Washington, DC 20224
Submitted Electronically: www.regulations.gov

Re: Notice of Proposed Rulemaking, "Affordability of Employer Coverage for Family Members of Employees" [REG-114339-21] [RIN 1545-BQ16]

Dear Commissioner Rettig:
Thank you for the opportunity to comment on the proposed rule, "Affordability of Employer Coverage for Family Members of Employees." We are writing this comment on behalf of the HRA Council, which we describe below. Our comment focuses solely on the policy issues in this proposed rule.

The proposed rule did not mention health reimbursement arrangements (HRAs) or how the proposed modification of affordability standards would interact with employer offers of HRAs to purchase individual market health insurance coverage. The proposed rule would permit additional dependents to access premium tax credits (PTCs) to purchase insurance in the exchanges. It would affect households in which an employee receives an offer of affordable self-only coverage from their employer, but not an offer of affordable family coverage.

The proposed rule should specify that employees with an offer of an affordable HRA—whether an individual coverage HRA (ICHRA) or a qualified small employer HRA (QSEHRA)—can purchase a family policy in the individual market exchanges by combining the employee's HRA with the amount of their dependents' PTC. Combining the HRA with the PTC in this manner should be permissible under the Affordable Care Act (ACA) and would help families select one plan with one network and one cost-sharing structure rather than having to navigate multiple insurance plans with different networks and different cost-sharing structures. Given the growth of HRAs and that families and their dependents will certainly be affected by the interactions between the employee HRA and the PTCs available for dependents, the IRS must clarify this matter. Employers also need this clarification to offer health benefits that best meet the needs and preferences of their employees. We urge you to provide the clarification we suggest, which would help more families secure affordable coverage for all family members, with an overall reduced administrative burden on families when they choose the same plan with one network and one cost-sharing structure.

Background on HRA Council and ICHRAs

The HRA Council is a non-profit, non-partisan advocacy group comprised of HRA administrators and practitioners working to create a vibrant HRA market by easing employers' ability to offer HRAs and employees' ability to use an HRA to enroll in coverage. Our mission is to promote education and awareness around HRAs and build upon them to expand options for employers and employees, thereby improving the stability and affordability of individual market health coverage. Collectively, organizations comprising the HRA Council are working with thousands of employers and hundreds of thousands of employees and their dependents to help them with their respective offer and receipt of health insurance using HRAs.

Building on the bipartisan "21st Century Cures Act," which established QSEHRAs in 2017, the Department of Treasury, along with the Departments of Health and Human Services (HHS) and Labor, created ICHRAs in a 2019 rule. This rule took effect on January 1, 2020. This rule increased employer options for offering coverage and employee choices of coverage as most employers offering health insurance only provide workers with a single coverage option. ICHRAs provide the potential to significantly increase worker choice and control over their health insurance.

ICHRAs work within the ACA's basic framework, where tax-free employer contributions are leveraged by employees to buy ACA-compliant plans in the individual market. As a result, both ICHRAs and QSEHRAs increase the total number of people with health insurance and boost individual market enrollment. Based on our member experiences, there is strong momentum for ICHRAs with enrollment increasing significantly each year.

We believe evidence suggests that ICHRAs are already improving the individual market. Our members report that enrollees using ICHRAs are much younger than individuals purchasing coverage through the exchanges. The typical employee using an ICHRA to purchase an individual market plan is between their mid-30's and mid-40's—nearly 10 years younger than the typical enrollee purchasing through a health insurance exchange.

Rule Should Specify that Employee HRAs can be Combined with Dependent PTCs

The proposed rule would expand the availability of PTCs by basing affordability on the cost of family coverage for dependents offered employment-based coverage. Although the proposed rule did not contain estimates of the impact of this modification, modeling from the Urban Institute estimates approximately 700,000 people would use the newly available PTCs to purchase an exchange plan. This includes half a million dependents who would move from a traditional group plan, and about 200,000 dependents would have otherwise been uninsured.

As ICHRAs and QSEHRAs continue to grow in popularity for employers and employees, many families will be in a situation in which the employee is offered affordable self-only coverage through an ICHRA or QSEHRA and the employees' dependents qualify for a PTC. Rather than the employee using the HRA to purchase one individual market plan and the employees' dependents applying the PTC toward a separate individual market plan, these families would almost certainly prefer to combine the HRA and the PTC to purchase a single individual market policy. Doing this would avoid several problems that the proposed rule discusses and reduce the ongoing administrative burden on families when managing their combined access to care.

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The cost for families to purchase exchange coverage with a PTC is determined in part by the applicable percentage that a household of a given income pays for a benchmark plan as well as household income, which are the same regardless of the number of people in the household covered by the plan. According to the economic analysis of the proposed rule, "if the number of individuals needing Exchange coverage is small – such as when some family members have access to other [minimum essential coverage] – the cost of Exchange coverage per enrollee is relatively high when added to the cost of the employee share of self-only coverage." For example, child-only coverage is often quite expensive in the individual market given rating rules added by the ACA. Therefore, the cost of child-only coverage even after accounting for the PTC might not be that much more attractive than a family group plan provided by the employer even if the employer provides little contribution to that family plan.

The economic analysis of the proposed rule also discusses the problems with split coverage for families, which "means multiple deductibles and maximum out-of-pocket limits for the family, which potentially increases out-of-pocket costs for families." According to the proposed rule, combining these problems means that "many families with offers of employer coverage who would be newly eligible for the PTC under the proposed regulations – including families with some uninsured individuals – would not see any savings in the combined cost of out-of-pocket premiums and cost-sharing."

Our suggested solution would minimize these problems for employees offered ICHRAs or QSEHRAs, since they would be able to combine employer HRA contributions for self-only coverage with the PTC amounts that this proposed rule would entitle dependents.

Commissioner Rettig, in sum, to advance the policy preferences of the Biden administration to improve the affordability of health insurance coverage and expand and improve the individual health insurance market, we urge you to clarify that families can combine the HRA amounts provided by employers for self-only coverage with dependent PTC amounts—if such dependent coverage is unaffordable per the revised standards put forth in the proposed rule—toward the purchase of a family policy in the individual market.

Sincerely,
/s/

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