



December 28, 2018

Submitted electronically via: www.regulations.gov

CC:PA:LPD:PR (REG-136724-17)

Room 5205

Internal Revenue Service

P.O. Box 7604

Ben Franklin Station

Washington, DC 20044

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

**Notice 2018-88 4980H – Shared Responsibility for Employers Regarding
Health Coverage**

**Section 105 – Amounts Received Under Accident and
Health Plans**

Dear Sir or Madam:

The National Business Group on Health is pleased to respond to the Department of Health and Human Services', Department of Labor's, and the Department of the Treasury's notice of proposed rulemaking regarding health reimbursement arrangements and other account-based group health plans and Notice 2018-88 regarding the application of sections 4980H and 105(h) of the Internal Revenue Code.

The National Business Group on Health (Business Group) represents [420 primarily large employers](#), including 74 of the Fortune 100, who voluntarily provide group health plan coverage to over 55 million American employees, retirees, and their families. Our members employ and provide health coverage under a wide variety of work arrangements, including full-time, part-time, seasonal, and temporary. They often have multiple lines of business in multiple locations and tailor employee work and benefit arrangements to the specific needs of each line of business.

As our members continue to develop group health and welfare plan designs and comply with applicable legal requirements, including those under the Code, primary concerns will be:

- (1) Minimizing the administrative and cost burdens associated with those requirements and

- (2) Having flexibility to provide comprehensive health and welfare benefits in the most efficient, cost-effective way possible while considering the needs of different employee populations.

Having additional flexibility in designing account-based group health plans will allow plan sponsors to maintain or expand high-quality, cost-effective health and welfare benefits for employees and their dependents. Therefore, the Business Group supports the Departments' work to expand the usability of HRAs and other account-based group health plans.

In particular, the Business Group supports the Departments' proposals to:

- Eliminate the prohibition on integrating HRAs with individual health insurance coverage;
- Allow plan sponsors to offer HRAs integrated with individual health insurance coverage on different terms to different classes of employees;
- Clarify that an ALE offering an individual coverage HRA would be permitted to use the HHI safe harbors for purposes of section 4980H;
- Provide a non-calendar year safe harbor for purposes of determining affordability under section 4980H;
- Treat HRAs integrated with individual health insurance coverage as providing minimum value, provided the coverage is affordable;
- Clarify that individual health insurance coverage integrated with HRAs does not have ERISA plan status;
- Provide that covered HRAs will not be treated as failing to meet the requirements of applicable section 105(h) regulations, provided the covered HRAs provide the same maximum dollar amount to all employees in a particular class; and
- Recognize HRAs as limited excepted benefits, provided these HRAs meet certain conditions.

We discuss our recommendations below.

Plan Administration and Integration of New HRA Rules

As noted above, Business Group members employ large, diverse employee populations and tailor their benefit plans to the needs of specific populations and lines of business. These employers generally operate (and provide health coverage) in multiple states. For these employers, uniform, streamlined plan administration across multiple locations is critical to minimizing costs and continuing to offer high-quality, comprehensive health

coverage to employees. To that end, we recommend that the Departments, in developing guidance related to HRAs integrated with individual health insurance coverage:

- *Simplify the requirements for substantiation and verification of individual health insurance coverage.* We recommend that reasonable procedures to verify enrollment in individual health insurance coverage include an attestation stating that a participant and any dependents are or will be enrolled in individual health insurance coverage during the plan year or for the duration of the participant's HRA coverage, whichever is longer.
- *Provide that plan sponsors may verify substantiation and verification and submit any required reporting electronically.* To streamline administrative processes and minimize costs, we recommend that plan sponsors be permitted to use electronic substantiation and verification procedures similar to those permitted for health savings account reimbursements. We also recommend that plan sponsors be permitted to submit any required reporting electronically.
- *Provide that plan sponsors may provide required notices with annual open enrollment materials or upon initial enrollment in integrated HRAs.* Our members devote substantial resources and time to communicating their benefits packages in a clear, comprehensive manner during open enrollment periods. We therefore recommend that future guidance provide that plan sponsors may provide required disclosures and notices associated with HRAs integrated with individual health insurance coverage with annual enrollment materials or upon initial enrollment in these HRAs, electronic or otherwise.
- *Establish a location safe harbor under section 4980H based on a single location.* As noted above, many employers operate in more than one municipality or state. To streamline administrative processes and minimize costs, we recommend that, in addition to the location safe harbor described in Notice 2018-88, the Departments provide a safe harbor that allows an ALE to determine the affordability plan for its employees based on a single location where the ALE operates (such as the location of the ALE's headquarters).
- *Establish a safe harbor under section 4980H based on age and a single location.* Likewise, we ask that the Departments reduce the substantial burden of determining an employee's required contribution, for section 4980H purposes, based on each employee's age being relevant to this determination. We recommend, for example, permitting plan sponsors to adopt the age bands in use in a single state (such as the state in which an ALE's headquarters is located) for an ALE's entire covered population.

We believe that the above recommendations, if implemented, will reduce administrative and cost burdens and allow plan sponsors much-needed flexibility in group health plan design.

Thank you for considering our comments and recommendations. Please contact me or Debbie Harrison, the National Business Group on Health's Assistant Director of Public Policy, at harrison@businessgrouphealth.org or (202) 558-3004 if you would like to discuss our comments in more detail.

Sincerely,

A handwritten signature in black ink that reads "Brian J. Marcotte". The signature is written in a cursive style with a long, sweeping tail on the letter "t".

Brian J. Marcotte
President and CEO