

---

# PUBLIC SUBMISSION

<b>As of:</b> August 23, 2010
<b>Received:</b> July 14, 2010
<b>Status:</b> Pending_Post
<b>Tracking No.</b> 80b19f8f
<b>Comments Due:</b> August 27, 2010
<b>Submission Type:</b> Web

**Docket:** HHS-OS-2010-0014

Patient Protection and Affordable Care Act: Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections

**Comment On:** HHS-OS-2010-0014-0001

Patient Protection and Affordable Care Act: Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections

**Document:** HHS-OS-2010-0014-DRAFT-0011

Comment on FR Doc # 2010-15278

---

## Submitter Information

**Name:** Joe Cowles

**Organization:** Commonwealth of Kentucky, Personnel Cabinet, Department of Employee Insurance

---

## General Comment

See attached file(s)

---

## Attachments

**HHS-OS-2010-0014-DRAFT-0011.1:** Comment on FR Doc # 2010-15278

---

**RE: OCIIO-9994-IFC**

The Department of Labor and Department of Health and Human Services request comments regarding the application of PHS Act section 2711 to stand-alone HRAs that are not retiree-only plans.

The Patient Protection and Affordable Care Act Interim Final Regulation state as follows concerning lifetime and annual limits for HRA's:

“Health Reimbursement Arrangements (HRAs) are another type of account based health plan and typically consist of a promise by an employer to reimburse medical expenses for the year up to a certain amount, with unused amounts available to reimburse medical expenses in future years. *See* Notice 2002-45, 2002-28 IRB 93; Rev. Rul. 2002-41, 2002-28 IRB 75. When HRAs are integrated with other coverage as part of a group health plan and the other coverage alone would comply with the requirements of PHS Act section 2711, the fact that benefits under the HRA by itself are limited does not violate PHS Act section 2711 because the combined benefit satisfies the requirements. Also, in the case of a stand-alone HRA that is limited to retirees, the exemption from the requirements of ERISA and the Code relating to the Affordable Care Act for plans with fewer than two current employees means that the retiree-only HRA is generally not subject to the rules in PHS Act section 2711 relating to annual limits. The Departments request comments regarding the application of PHS Act section 2711 to stand-alone HRAs that are not retiree-only plans.”

The Public Employee Health Insurance Program maintains a general purpose stand-alone HRA. The stand-alone HRA was established by the Kentucky General Assembly in 2006. Plan members that elect said stand-alone HRA typically have health insurance coverage through a spouse and therefore use the HRA dollars to pay co-pays and other of pocket expenses.

Currently, the stand-alone HRA provides \$175 per month with a maximum annual limit of \$2,100.00 with the ability to roll any unused funds to the next plan year. Approximately 25,000 members elected the stand-alone HRA option for the 2010 plan year. There are no other annual or lifetime limits. There is authority to reduce this annual limit and otherwise change the stand-alone HRA. As a result of intense budget pressure this is something under consideration for plan years 2011 and 2012.

Should it be determined that stand-alone HRA's are subject to annual and lifetime limits restrictions, a potential conflict exists between a state statute and the new federal regulations. This will create complexity for compliance and confusion for plan members. Moreover, by making stand-alone HRA's subject to annual limit restrictions, the future of this stand-alone HRA, and other stand-alone HRA's being offered as a benefit to employees in the future would be in doubt.

There does not appear to be a reasonable distinction between a retiree-only stand-alone HRA and the stand-alone HRA referenced above. The Public Employee Health Insurance Program stand-alone HRA is a coveted and valued benefit for members. Mandating annual and lifetime restrictions on stand-alone HRA's will not ensure “that patients are not confronted with devastating health costs because they have exhausted their health coverage when faced with a serious medical condition.” Nor does an adding said restriction “...help ensure that more Americans with chronic, long-term, and/or expensive illnesses have access to quality health coverage.” In short, for purposes of annual limits, the stand-alone HRA is used by its participants

in the same way as a health flexible spending account, medical savings account or health savings account would be and should be given same immunity from restrictions.

Based on the aforementioned, stand-alone HRA's should be exempt from PHS Act section 2711 and annual and lifetime limit restrictions. At least for the Public Employee Health Insurance Program, making stand-alone HRA's subject to the annual limit restrictions will have a negative impact on a valuable employer sponsored benefit. In the alternative, if it is determined that the restrictions do apply, the effective date should be substantially delayed in recognition of the fact that the state legislature might have to amend the statute and to limit the negative impact on plan members.