

PUBLIC SUBMISSION

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Definition of Employer Under Section 3(5) of ERISA-Association Health Plans

Comment On: EBSA-2018-0001-0001

Definition of Employer Under Section 3(5) of ERISA-Association Health Plans

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Comment on FR Doc # 2017-28103

Submitter Information

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General Comment

See attached file(s)

Attachments

Partner Comments

We are writing as in support of Association Health Plans. These plans are an important benefit for our members as it allows them to provide important medical coverage to their employees. The proposed rule contains several provisions that could hurt existing AHPs and risk the affordability that is currently a benefit of selecting an AHP for health insurance.

- 1) **Require associations to be pre-existing** - AHPs should only be able to be formed by existing associations. This requirement, there could be significant fraud and abuse. Associations like ours have been serving the interests of their membership. We know the needs of our members and are responsive to them. Adding this requirement would ensure that employer's needs are represented in the insurance product offerings of the marketplace. There should be clear requirements for sponsoring associations:

Requirement 1: Sponsoring associations should only be existing organizations that have been in existence for at least 5 years

Requirement 2: Sponsoring associations must have an active tax-exempt status

Requirement 3: Sponsoring associations should have a membership base that confirms membership at least annually

Requirement 4: AHP participants should be regular members of the organization (not a special class that only provides access to the AHP).

- 2) **Nondiscrimination provisions affecting rating rules** - AHPs should be able to use cost data in assessing rates at the employer level, as is current practice. Failure to allow this factor in rating would inherently result in cross-subsidization and discourage the use and expansion of AHPs. Using "one rate for all" results in adverse selection, cripples the expansion of AHPs, creates unhealthy community rated/individual markets, and will work against the Administration's goal of providing affordability through AHPs.
- 3) **Compliance with State Laws and Regulations** - It is essential that each State's insurance commissioner/officer has the ability and power to regulate the insurance market within the state.

All states should have the right and ability to set rating rules as well as determine if products that go across state lines should be permitted. The proposed rule should be amended to ensure that all AHPs comply with local state regulations.
- 4) **AHP membership** – AHPs should retain the right to set business rules as to what membership requirements are (including company size and/or structure). Associations should be allowed to determine if they include working owners (and spouses) in their minimum group size requirements.
- 5) **Effective date** – Any change will cause disruption in the marketplace which could be costly to employers. As such, the effective date of this rule needs to be 2020 or later.

Taking steps to create a more favorable regulatory environment for AHPs to expand will be great for small businesses, however, the proposed rule would prevent this expansion from occurring unless the above considerations are incorporated into the final rule.

Thank you,

