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March 6, 2017

Jeanne Klinefelter Wilson
Deputy Assistant Secretary,
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

RE: Definition of “Employer” under Section 3(5) of ERISA -- Association Health Plans [RIN 1210-AB85]

Dear Ms. Klinefelter Wilson,

This letter is in response to the Department of Labor’s (DOL) proposed rule titled **Definition of “Employer” under Section 3(5) of ERISA -- Association Health Plans [RIN 1210-AB85]**. We appreciate the opportunity to provide comments and feedback on the proposed rule.

Humana Inc., headquartered in Louisville, Kentucky, is a leading health care company that offers a wide range of insurance products and health and wellness services that incorporate an integrated approach to lifelong well-being. Humana serves approximately 14 million total medical members receiving medical services across the country, including commercial small group health plans and Medicare and Medicaid health plans as well as coverage for servicemen and servicewomen, and veterans under the Tricare program. Humana is focused on innovation that helps our members, our partners, and our industry.

Humana appreciates the Agency’s efforts to provide small businesses with access to more health coverage options.

Within our comments below, we have provided recommendations on various facets of the proposed rule that warrant further clarification based on experience providing commercial group health insurance broadly, with a particular focus on small employers.

Overall, we encourage you to approach the final rules with an aim of fostering a uniform operating environment for all insurers who choose to offer coverage to small employers, including association health plans, as it will help to maintain a healthy market for employer-based coverage and also help to promote the offering of a variety of viable, competitive products to maximize choice among employers and sole proprietors.

Specific questions and comments on items for further development are outlined below:

Definition of “Former Employee”

Area for comment: The proposed rule references “former employees” for purposes of defining a bona fide group or association of employers that does not make health coverage through the association available other than to employees and former employees of employer members and family members or other beneficiaries of those employees and former employees.

Recommendation: The Department should clarify what constitutes a “former employee” for determining eligibility for coverage under this proposed rule. Absent reference to a specific definition, an assumption can be made the term is deemed to include retirees should the employer member choose to establish a separate retiree-class or an employer group waiver plan (EGWP), which is common in the large group market (Medicare-eligible or not). Reference to former employee could also be construed to include employees eligible for COBRA continuation coverage (applicable to employers with 20 or more employees). Final guidance should clarify the term is not intended to include persons who were formerly employed by an employer who are not eligible for COBRA continuation or those who do not choose to elect COBRA continuation.

To validate the employment relationship, the AHP and any insurer or administrator it enters into a relationship with to provide coverage for its members, should have a means to access documentation to verify employee eligibility.

Application of COBRA and Other Federal Laws Applicable to Employers of a Certain Size

Area for comment: Under the proposed rule, AHPs would be considered as the employer sponsor of a single group health plan under ERISA; the application of the “look through” doctrine to determine the size of the employer member would not apply. Additionally, the proposed rule does not address how the AHP is viewed for purposes of applying COBRA or other federal laws applicable to employers of a certain size.

COBRA applies to all private-sector group health plans maintained by employers that have at least 20 employees on more than 50 percent of its typical business days in the previous calendar year. Both full and part-time employees are counted to determine whether a plan is subject to COBRA. Each part-time employee counts as a fraction of a full-time employee, with the fraction equal to the number of hours that the part-time employee worked divided by the hours an employee must work to be considered full time.

The Pregnancy Discrimination Act of 1978 applies to employers with 15 or more employees and prohibits discrimination on the basis of pregnancy, childbirth or related medical conditions. Health insurance provided by an employer subject to the law must cover expenses for pregnancy-related conditions on the same basis as other medical conditions.

Recommendation: We recommend the final rule clarify the application of these two federal laws to an AHP, specifically whether these laws apply at the AHP level or to employer members with the applicable number of employees.

Special Process to Determine a Principal Place of Business in a Metropolitan Area

Area for Comment: The proposed rule raises the question of whether a process should be established by the Department to review and issue a determination that all of the association's members have a principal place of business in a metropolitan area.

Recommendation: We recommend that the Department create a process to ensure all of the association's members have a principal place of business in a metropolitan area given this is one of the proposed standards for demonstrating a commonality of interest. This determination will be helpful for insurers and other administrators as they could readily verify that their plan service areas align resulting in the production of an accurate quote for coverage.

Developing a fully-insured group health plan for an association within a metropolitan area will have its challenges as it pertains to obtaining state regulatory approvals of the policy and member certificates of coverage. Some states require policy form filings for association members who reside in their state, regardless of where the employer's principal place of business is. For example, if a metropolitan area spans across three different states, the insurer would need to have different versions of the coverage document based upon the association member's state of residency in order to meet the state regulatory requirements. Clear guidance aimed at simplifying the regulatory approval path will help facilitate development of these plans in metro areas that cross state lines.

Non-Health Rating Factors Commonly Applied in the Large Employer Market

Area for Comment: The proposed rule indicates that it would be permissible for AHPs to vary premiums to reflect actuarial risk based on non-health factors.

Recommendation: Non-health factors commonly applied to quantify the actuarial risk for premiums under a large employer group health plan include age, case size, industry, and gender. We request the Department clarify that all actuarially sound factors commonly applied in the large group market, including age, case size, industry and gender, are permissible rating factors for AHPs.

As always, we value the opportunity to provide input and are pleased to answer any questions you may have with respect to our comments.

Sincerely,



Debra A. Oberman
Vice President, Corporate Affairs
Humana