

February 27, 2018

U.S. Department of Labor
200 Constitution Avenue NW
Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
Washington, DC 20210

Attention: Definition of Employer—Small Business Health Plans RIN 1210-AB85

To Whom It May Concern:

Thank you for the opportunity to comment on U.S. Department of Labor's (DOL) proposed regulation ("Proposed Rule" - RIN 1210-AB85) under Title I of the Employee Retirement Income Security Act (ERISA) that would broaden the criteria under ERISA section 3(5) for determining when employers may join together to form Association Health Plans (AHP).

I have been involved as a Trustee of an AHP for several years and have been the leader of its sponsoring Association.

I am writing today to express concerns about the proposed EBSA-2018-0001. Expansion of AHPs is a great thing for healthcare and offers small and medium sized businesses more options for coverage and also provides for affordability. This is critical when companies are competing for talent. There are several provisions in the proposed rule that would negatively impact the market and prevent the expansion of AHPs, while also having significant impact on current insurance markets that could result in rates increasing or product selection decreasing:

Problem: Removal of Essential Benefits

The proposed rule eliminates the requirement of essential benefits. Removal of essential benefit requirements will result in only healthy populations drawing towards AHPs and provide unhealthy adverse selection in Individual markets. Businesses have made their voice clear on this issue – they want AHPs to provide comprehensive benefits so that they are able to attract and retain talent and compete with larger businesses who have additional options and requirements.

Solution: The rule must change to maintain essential benefits requirement for Association Health Plans.

Problem: Loosening of Requirements for Sponsoring Organizations

In the past, there has been fraud and abuse within AHPs that were created solely for the purpose of selling insurance. These organizations didn't have a membership base whom they were responsive to. The proposed regulations recommend some measures that may help prevent such fraudulent activity by a newly formed AHP, however, I am concerned that allowing creation of AHPs without a clear connection to an existing membership association could lead to abuse.

Solution: Require associations to be pre-existing . As a Trustee and President of a Sponsoring Organization for six years, I saw first-hand how impactful AHPs can be when they are responsive to their members' needs. As such, AHPs should only be able to be formed by existing associations that have a membership base.

The proposed rule should be amended to include specifications around what constitutes a sponsoring organization. At a minimum, the following should be required:

- 1) Organization has been operating for more than five years
- 2) Organization has a federal tax exemption as a non-profit organization
- 3) Organization is comprised of members who share a commonality such as industry

Problem Expansion of HIPAA Non-Discrimination Rules –

Current law does not permit Association Health Plans to discriminate against individual participants by taking health status factors into account in either offering them coverage or setting the benefits they will receive or the rates they will pay. Current law does permit Association Health Plans to underwrite distinct groups or employers taking into account the group's or employer's own overall health status or claims experience and does not limit the amount a distinct group or employer can be charged for coverage. This underwriting practice has permitted Association Health Plans to grow and succeed in offering the kind of affordable health coverage to small employers envisioned by the President's Executive Order. This method of underwriting and rate setting is very common in the Association Health Plan industry today. The proposed regulations will require that Association Health Plans not treat member employers as distinct groups and consequently all groups would be treated the same for benefits and rates with a few limited "bona fide employment based classifications" taken into account. It is noted that gender and age are not included in the proposed regulations as "bona fide employment-based classifications." The writers of the proposed regulations go to great lengths in justifying and supporting the new non-discrimination rule that they are proposing. Nevertheless, when the new non-discrimination rule prohibiting underwriting that takes into account any health status factor by group or employer is combined with the guaranteed issue and guaranteed renewability rules the result is a disaster for Association Health Plans.

Most Association Health Plans do not have the resources to withstand one or two years of bad claims experience (even with stop loss insurance) without raising their rates to the point that they are not competitive in the small group market. Individual group or employer underwriting is the safety valve that allows Association Health Plans to maintain and grow with reasonably priced coverage and benefits and fulfil the promise of more affordable health care for small employers.

Solution: Grandfather existing bona fide Association Health Plans - If the decision of the Department is to proceed with the non-discrimination rule as proposed, I would ask the Department to consider a grandfathering of existing Association Health Plans that have already met the bona fide or true single employer tests to continue the underwriting practice they currently use.

Problem: Lack of Requirement for AHPs to Comply with State Regulations –

The proposal fails to specify which state laws can still be enforced, including for example, laws relating to rating practices or qualifications of AHP sponsoring entities. This will cause an uneven playing field that will result in adverse selection throughout the country and could lead to insurance companies

raising rates to mitigate risks of unknowns. It is essential that each State's insurance commissioner/officer has the ability and power to regulate the insurance market within the state.

Solution: Require Compliance with State Law - Historically, state insurance regulators have had the authority to review and approve insurance products offered to residents and businesses in their states. 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.

Problem: Effective Date Causing Disruption and Increased Rates –

As seen with the implementation of ACA, uncertainty tends to cause insurance companies to inflate their premiums due to unknowns. Failure to allow sufficient implementation time will result in increased costs to employers.

Solution: The effective date of this rule needs to be 2020 or later to allow enough time for insurance companies to react and adjust without causing unnecessary price increases for small and medium sized employers.

Association Health Plans can be a vehicle to expand quality and affordability of health care coverage. However, the proposed rule would prevent this expansion from occurring and would lead to increased risk of fraud and abuse; lower quality benefits; adverse selection and ultimate deterioration of overall insurance markets.

Thank you again for the opportunity to comment. Please do not hesitate to contact me with any questions at msdaudon@gmail.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Maud Daudon", written in a cursive style.

Maud Daudon