

## UNITEDHEALTH GROUP®

Daniel J. Schumacher  
President & Chief Operating Officer  
UnitedHealthcare  
9700 Healthcare Lane, MN017-E010  
Minnetonka, MN 55343

March 6, 2018

Secretary Alexander Acosta  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210  
Attention: Definition of Employer—Small Business Health Plans RIN 1210–AB85

### **RE: Definition of “Employer” Under Section 3(5) of ERISA – Association Health Plans**

Dear Secretary Acosta:

UnitedHealth Group (UHG) is pleased to respond to the Department of Labor’s (DoL) request for comments regarding the Definition of “Employer” Under Section 3(5) of ERISA – Association Health Plans Proposed Rule.

UHG is dedicated to helping people live healthier lives and making our nation's health care system work better for everyone through two distinct business platforms – UnitedHealthcare, our health benefits business, and Optum, our health services business. Our workforce of 285,000 people serves the health care needs of nearly 140 million people worldwide, funding and arranging health care on behalf of individuals, employers, and the government. As America’s most diversified health and well-being company, we not only serve many of the country’s most respected employers, we are also the nation’s largest Medicare health plan – serving nearly one in five seniors nationwide – and one of the largest Medicaid health plans, supporting underserved communities in 28 States and the District of Columbia.

As a company that offers Association Health Plans (AHPs), Affordable Care Act (ACA)-compliant small group products, and small group transitional relief products, we have significant experience in the employer market. We strongly support the Administration’s goal of expanding access to lower cost, higher value coverage options to employers as a means of increasing the number of insured workers. Currently, the small group market is stable with nearly 90 percent of employees reporting they are satisfied with their employer-sponsored health insurance coverage. Therefore, it is vitally important that DoL implement the Final Rule in a manner that establishes AHPs as a new employer coverage option that does not disrupt existing coverage and high-performing markets. Specifically, we recommend the Final Rule avoid creating adverse selection dynamics in the existing small group market, which could lead to disruption through higher premiums and fewer individuals having insurance.

UHG believes that the Proposed Rule aligns with the goal of preserving the small group market while providing employers with an attractive new vehicle for offering insurance to employees and their families. However, in order to fully protect existing coverage and ensure a stable employer market, we recommend DoL take five actions in the Final Rule, described in more detail below:

- Specify how rating factors may be applied;
- Clarify treatment of AHPs spanning more than one State;
- Clarify Guaranteed Availability requirements;
- Grandfather existing AHPs; and
- Establish verification of working owner status.

### **Specifying How Rating Factors May Be Applied**

DoL proposes to establish protections for employers and their employees who seek to join an AHP by prohibiting AHPs from restricting membership based on health status or applying rating factors based on health status that would result in higher premiums for the employer-member or their employees. The purpose of these protections is to create access to AHPs for small businesses regardless of their health risk status, and to prevent AHPs from creating adverse selection in the small group market by only encouraging healthier AHPs members. We support these protections.

However, the Proposed Rule does not provide explicit guidance as to whether AHPs could apply other rating factors such as age or gender at the employer-member level. Applying these factors at the employer-member level could also lead to discrimination and adverse selection issues. DoL should explicitly state in the Final Rule, and provide an additional example in the regulation text, that rating based on health, age, or gender is prohibited at the employer-member level and can only occur at the AHP level.

### **Clarifying Treatment of AHPs with Employer-Members Spanning More than One State**

The Proposed Rule contemplates situations where AHP membership would span multiple States, but does not establish a single regulatory regime that would apply in this situation, nor indicate how conflicting Interstate and Federal rules would be addressed. AHPs and issuers will need more clarity on the applicable regulatory environment in order to operate effectively. We recommend that the Final Rule include guidance, or that the Departments of Health and Human Services, Labor and Treasury, issue concurrent sub-regulatory guidance, indicating which State and Federal laws will be controlling with regards to AHPs on a wide variety of issues, including but not limited to, rating rules and benefit mandates. We further recommend that DoL work with State regulators to ensure that the States put in place clear rules for the regulation of AHPs.

### **Clarifying Guaranteed Availability Requirements**

The Proposed Rule does not address how Guaranteed Availability laws will apply to issuers. Some issuers that provide coverage in the traditional large group market may not be financially or operationally prepared to meet the unique needs of AHPs, or may wish to accommodate these unique needs and demands through a suite of AHP-specific products not available to the rest of the large employer market. We recommend that in the Final Rule, DoL clarify that AHPs are distinct from the large group market segment and that issuers who offer coverage in the large group market may voluntarily opt-in or opt-out of participating in the AHP market. Further, DoL should clarify that issuers have the flexibility to offer AHP-specific products, should they opt-in to the AHP market.

### **Grandfathering Existing AHPs**

The Proposed Rule provides that existing AHPs will have to come into compliance with the new AHP provisions, including the nondiscrimination and governing structures provisions. In order to reduce any disruption in the employer market, we recommend that DoL allow existing AHPs to maintain their current governing structures, rating methodologies, and health coverage offerings, and not apply any more restrictive requirements in the Final Rule to AHPs that were offering comprehensive health coverage prior to the Rule's effective date. Alternatively, DoL could exercise its non-enforcement discretion and provide for a transitional period to allow such existing arrangements to come into compliance with these new standards.

### **Establishing Verification of Working Owner Status**

The Proposed Rule expands existing AHP membership criteria to permit sole proprietors and other self-employed individuals to join AHPs. DoL has requested comments on whether the standards set forth in the Proposed Rule provide adequate safeguards to ensure that “working owners” who join an AHP genuinely meet the required standards. We agree that safeguards are necessary to ensure that working owners are engaged in a trade or business, and that AHPs are not offered to non-qualified people from the individual market. As an added safeguard, we suggest that AHPs, and issuers providing coverage to an AHP, be permitted to require submission of documentation, such as customer invoices, business licenses, or tax returns, to verify the individual has met the definition of a working owner.

As always, UHG welcomes the opportunity for constructive discussion and collaboration as part of this comment process, and looks forward to sharing any additional data or information that supports the expansion of access to innovative, lower cost and higher value health coverage options.

Thank you for your thoughtful consideration of our comments. Please do not hesitate to contact us.

Sincerely,



Daniel J. Schumacher  
President and Chief Operating Officer  
UnitedHealthcare