



March 5, 2018

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

ATTN: Definition of Employer – Small Business Plans, RIN 1210-AB85

RE: Washington Technology Industry Association (WTIA) Comments on Proposed Rule

To Whom It May Concern:

Introduction

On January 5, 2018, the U.S. Department of Labor (USDOL) proposed new rules concerning the role, rights and obligations of an Association Health Plan (AHP) in the “Definition of Employer – Small Business Plans” draft publication. We are encouraged by this announcement. However, we would like to express a few concerns with the initial draft rules and also make a few recommendations based on our 25 years of experience in this arena.

First, we must provide some background and a logic framework before making our specific recommendations. The regulatory environment in the Washington state small-group insurance market successfully balances appropriate oversight while encouraging growth of a healthy and critically important insurance market for small companies. We believe the Washington state AHP market is an excellent benchmark for the USDOL to consider while drafting revisions to the proposed rules.

The Washington state small group health insurance market has approximately 400,000 employees and dependents. Nearly half of those companies purchase community health plans and the other half purchase AHP’s. This 50-50 mix has remained mostly stable for decades. Both of these plan options are well regulated by the Washington state Office of Insurance Commissioner and employees have benefited through more choice and rate stability.

In our role as sponsor of a very successful AHP, the WTIA actively participated in the creation of significant case law and rulings in Washington state that have resolved complex issues related to eligibility, pricing, product, and administration in small group insurance markets. These are

essential matters. In fact, the regulations painstakingly developed in Washington state over the past few decades are a key reason why our AHP market performs well.

Since 2001, our AHP average annual price increase has been substantially lower than alternatives in the small-group community market. The WTIA AHP currently serves 375 tech companies with an average of 15 employees each. This represents more than 9,500 employees and dependents served. Our company renewal rate is over 90 percent year-over-year demonstrating excellent service and price performance.

Regardless of what rules the USDOL finally publishes on this matter, we strongly urge that the USDOL “grandfather” existing AHP’s in Washington state. Doing so would allow our AHPs to continue to operate under the regulatory, eligibility, and rating methodologies that are well proven and successfully meet the needs of our small companies.

Washington Technology Industry Association

The WTIA is a 501(c)(6) non-profit trade association located in Seattle, Washington. We consolidate the power of more than 800 tech companies to solve business challenges they cannot easily solve alone. Our guiding principle is to help Washington residents gain access to tech-industry jobs.

Primary functions:

- We act as a unifying, independent voice to inform and motivate industry, education, and government peers to collaborate productively
- We use group buying power to help tech companies grow profitably

Priorities:

- We recruit hard-to-find talent for tech companies, with a strong emphasis on women, people of color, and veterans
- In partnership with USDOL, we operate the only nationally registered industry apprenticeship program (see ApprentiCareers.org)
- We provide a valuable employee benefits bundle for small and mid-sized tech companies to help them recruit and retain talent
- We facilitate peer level introductions and professional networking among education, government and industry leaders
- We cultivate public policies that are well informed and aligned with our guiding principle of providing broad access to high-wage, tech industry jobs

WTIA Health Insurance Evolution

The WTIA began exploring health insurance in the early 1990's because of overwhelming demand received from smaller sized tech companies. Smaller companies wanted access to health programs that would allow them to authentically compete for talent against local industry giants like Microsoft, Amazon, Starbucks and Boeing who all provide generous employee benefits.

These smaller companies specified a need for comprehensive, high-value, and administratively stream-lined health insurance solutions. While they needed good benefits to attract and retain professional talent, they were too small to carry the operational burden to manage and deliver the needed benefits.

As we evaluated the market landscape, it became clear that there were limited health insurance options for small employers. Our research found that most medical plans were generic (sometimes referred to as "community" plans), purchased as a stand-alone plan, and could not be combined with other health products in an administratively simple and cost-effective way.

We launched our first health insurance offering to WTIA members in 1995. We were unable, at that early stage, to offer a unique insurance plan bundle where we could impact pricing. Rather, the only option we had was to provide health insurance through an endorsed insurance broker relationship. In short, we only allowed one endorsed broker access to sell to our member companies in exchange for premium service and access to multiple insurance markets.

Although our endorsed insurance broker was able to access many medical plan options, they had no ability to impact plan features, bundle multiple insurance types, adjust program design, or manage the underlying cost for small group employers. From this first experiment, we learned that we needed to construct something unique and specific to our member companies.

The solution – sponsor the creation of a new 501(c)(9) Voluntary Employee Benefits Association (VEBA) under the Washington state regulatory provision allowing for an AHP to provide benefits.

Launching the WTIA AHP

An AHP allowed us to create our own medical insurance plans, bundle them with other health insurance offerings, control the administration, and manage the service standards for our member companies.

We sponsored the formation of the WTIA 501(c)(9) VEBA, operating as a USDOL bona fide, association sponsored, Trust to provide an AHP in Washington state. For the last 18 years, WTIA members have been able to purchase health plans designed to meet industry needs, with sustainable pricing, and turnkey administrative solutions that allow them to compete for talent and realize their primary mission - building successful technology companies.

The results have been outstanding by any measure.

Member participation: As of February 2018, the WTIA AHP provides health benefits to 375 technology companies and 8,000 participants.

Consumer options: Our health insurance product suite is dramatically more comprehensive than what is available in the small-group community market. We offer 18 medical plan designs on 2 care networks plus access to multiple dental, vision, employee assistance, life, short disability and long-term disability ancillary health lines.

Simple admin: Any combination of plans that a company chooses, regardless of complexity, is bundled into one master AHP contract. The WTIA serves as the primary point of contact on all administrative matters. AHP members receive one consolidated invoice and we perform COBRA administration on their behalf. The WTIA AHP assumes the fiduciary liability of running the program and performs all administrative filings on behalf of our members.

Price sustainability: Since 2001, the WTIA health program's average annual price increase has been substantially lower than the alternatives in the small-group community market.

Click [here](#) for more information about the WTIA AHP and related HR Benefits.

WTIA AHP Guiding Principles

We have documented our "guiding principles" as they relate to an AHP. These guiding principles are organized in order of importance and reflect our perceived impact on successful AHP regulation.

Guiding Principle 1: Federal rules should only define who can sponsor an AHP.

The USDOL, through ERISA law, currently allows AHP's to form and operate. The guidance in ERISA that governs an AHP, however, is vague and incomplete.

Any new Federal AHP rules should focus on clarifying the guidance that currently exists and address the requirements for who can sponsor an AHP.

Recommendations:

- 1) Require all states to recognize AHP's as a single large group employer
- 2) Allow AHP's to operate in multiple states, provided that they meet each state's regulatory requirements
- 3) Modify eligibility test from "bona fide" to "minimum criteria"
- 4) Establish "minimum criteria" for Associations to form and operate an AHP including:
 - Must be a valid not-for-profit 501(c)(6) legal entity
 - Must be in operation for 10+ years
 - Must be formed to provide more than just health benefits
 - Must provide members with benefits other than medical insurance
 - Must be of sufficient operation size and staff expertise to serve market
 - >\$1m in annual revenues
 - >\$500k in net assets
 - 1+ licensed life and disability producer on staff
- 5) Grandfather existing and proven AHP programs in Washington state

Guiding Principle 2: State Government (Insurance Commissioners) should regulate rating, product, non-discrimination, and administration.

Each state has its own office of insurance commissioner (OIC). These state agencies have experience, credentials, and qualifications to regulate insurance markets.

These offices exist to protect citizens from predatory or discriminatory pricing, ensure consistent product offers, administrative processes, etc. They are in the best position to determine necessary and sufficient regulations for rating, product, non-discrimination, and administration for their jurisdiction.

It is almost certain that what works in Washington will not work in California, New York, Arkansas, or Texas. We would not seek to impose our rules on any other state and would therefore urge the USDOL not to apply a one-size-fits-all methodology.

We also believe that if the USDOL focuses the new AHP rules only on issues related to who can sponsor an AHP, then there is a much greater chance of those rules being embraced and supported by the States. We also believe there is a much greater chance of the rules having lasting power and not being arbitrarily overturned by a new administration with a different point of view on the role of an AHP.

March 5, 2018

Page 6

Recommendations:

- 1) DOL should not address regulatory issues related to AHP rating, product, non-discrimination, and program administration – this should be done at the state level
- 2) States with existing AHP's, such as Washington, should be grandfathered under their current rules and regulations without change

In closing, we are encouraged by the USDOL intent to expand the role of an AHP to better serve the needs of small business. We would be happy to visit with you to provide more details, case studies, and supporting evidence for our recommendations.

Regards,



Michael Schutzyer, CEO
Washington Technology Industry Association