

PUBLIC SUBMISSION

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Docket: EBSA-2018-0001

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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General Comment

Expansion of AHPs is a good thing and can bring many good things to businesses and employees. However, this rule doesn't take into consideration several important issues:

- 1) Needed protections against plans / insurance companies from excluding pre-existing conditions
- 2) AHPs need to be able to decide their own business rules as to who they serve (i.e. group size and industry nexus)
- 3) Allowing any association to pop up without being in existence is dangerous and can lead to abuse and fraud:
 - Should require at least 3 years of an association being in existence prior to being able to offer an AHP
 - Leader of said association should be a fiduciary of the AHP

4) Rating rules proposed in the rule would create cross-subsidization that would inherently lead to an unhealthy AHP market. The State of Washington should be used as an example - there are several thriving AHPs in this state and State law has been written in order to regulate as well as allow for competition and proper rating.

I offer this example:

Two families go to a restaurant for dinner - it is all you can eat buffet for \$20/pp. Each family paid \$80. However, when you look at it closer having one rate for each person isn't necessarily equitable. Family 1 had a family of 2 adults and 2 Teenagers, all who consumed relatively the same amount of food. Family 2 was comprised of 1 adult, 1 elementary child, one toddler and one infant (who is bottle fed). By applying the same simple rate to each person coming to the restaurant Family 2 is effectively subsidizing the meal of Family 1. This is the same for the rating rules (non-discrimination provision) in the proposed rule. While I agree that health questionnaires should not be used in rate-setting, use of claims cost should be allowed as it shows the utilization rate on a plan and effectively gives COGS - a simple business concept that I am sure President Trump would agree should be considered when pricing any product.

4) Individual states' rights need to be preserved and each states' insurance regulator should be able to determine if selling across state lines is in best interest of the market which they serve.