

February 26, 2018

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
United States Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

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

On behalf of the American Dental Association and its constituent members, we appreciate the opportunity to provide comment on 29 CFR Part 2510, RIN 1210-AB85, the department's proposed rule addressing the definition of employer under section 3(5) of ERISA – Association Health Plans. Health insurance options and affordability continue to be a concern for small businesses across the country, including dental practices. Association Health Plans (AHPs) could reduce costs for small to mid-sized businesses by providing groups of employers the opportunity to establish such plans and leverage that bargaining power to access health insurance options currently only available to large group plans. Allowing increased access to AHPs for small to mid-sized businesses has the potential to achieve the Administration's goal of putting small businesses on a level playing field with large businesses across the country.

As proposed, the rule would cede significant oversight and final rulemaking authority to each state. This deviates from the manner in which large employers are currently treated under existing federal regulations and also serves as a deterrent for AHPs to fully operate on a regional or national scale by increasing the potential regulatory barriers for small to mid-sized businesses to gain access to increased affordability and plan options.

#### Health Nondiscrimination Protections

Existing HIPAA/ACA health nondiscrimination rules generally prohibit health discrimination within groups of similarly situated individuals, but may not prohibit discrimination across different groups of similarly situated individuals. While the proposed rule would permit AHPs to use age, gender and geography as variable factors in rating each small business group participating in an association health plan, similar to the small group market, the rule would prohibit the use of health status factors of each small business group as a variable rating factor through the application of HIPAA/ACA nondiscrimination rules at the aggregate level, as opposed to allowing the AHP to use health status experience rating as a factor at the individual small business group level. The ADA believes that this would be detrimental to small businesses that currently utilize AHPs to access expanded health plan options and more affordable options. It also would not allow AHPs to enjoy the same discretion as large businesses by prohibiting AHPs from treating each small business that participates as a separate group of similarly situated individuals for the application of HIPAA/ACA health nondiscrimination. The utilization of experience rating at the individual group level (in this case the small businesses who are participating in the AHP) would allow AHPs to offer a better pricing structure and allow the varying claims experience to offset higher costs which may be incurred from a single group and applied across the plan to maintain affordability for all groups within the AHP.

Prior to the enactment of the ACA, commercial health insurers utilized health status and claims experience as a component of rating employers in the small group market (currently law allows large groups to utilize such components). The ACA recognized the potential for market destabilization as a result of eliminating this element of risk management. To address this, the ACA requires the use of risk adjustment in the small group market to reallocate premium income among health insurers within the Exchanges to address the differences in enrollees' aggregate health conditions. This intervention by the Federal government was intended to offset the ACA's restriction on the use of health status and claims data as a rating factor to accurately price plans based on risk. While the proposed rule mirrors the components of these market reforms included in the ACA, it does not provide a similar mechanism for economic stabilization of AHPs, ignores sound actuarial principles and places AHPs at a disadvantage over large businesses. The proposed rule would prohibit AHPs from using necessary underwriting and rating structures without the additional risk adjustment.

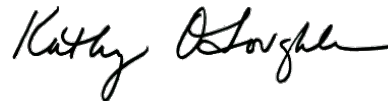
We request that the DOL remove the nondiscrimination protection from the proposed rule and allow AHPs to continue to use the underwriting pricing structures that allow them to be a viable health insurance option available for small employers across the country. We believe all small businesses should have the ability to access options currently afforded to large employer groups and small employers that access health coverage under the existing ACA small group market.

Should there be questions, please feel free to contact Ms. Janice E. Kupiec at 202-789-5177 or [kupiecj@ada.org](mailto:kupiecj@ada.org).

Sincerely,



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President



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