

MichBusiness

Powered by MBPA

explore | connect | thrive

March 2, 2018

The Honorable Preston Rutledge
Assistant Secretary of Labor
Employee Benefits Security Administration Office of Regulations and Interpretations
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

RE: Definition of 'Employer' under Section 3(5) of ERISA—Association Health Plans (RIN 1210-AB85)

Dear Assistant Secretary Rutledge:

MichBusiness appreciates the opportunity to review and provide comments to the Department of Labor on the **Definition of 'Employer' under Section 3(5) of ERISA – Association Health Plans**.

MichBusiness, also formally known as the Michigan Business and Professional Association, is a Michigan-based organization dedicated to helping businesses across Michigan succeed through valuable resources, educational programs, high-impact events and more. For more than three decades, the organization's mission and history of successful business partnerships have positively impacted more than 150,000 businesses.

In our role as a trusted partner in Michigan's business community, we reviewed the proposed regulations to broaden the formation and membership of AHPs. We believe the rule will have a negative impact on the stability of the small group market, resulting in increased premiums and a fractured risk pool.

Michigan's small group market has remained relatively stable, due to a level playing field that successfully mitigates against adverse selection. This is accomplished in large part by prohibiting discrimination based on health status. In addition, the work performed by Michigan's regulatory agencies ensures that plans offered to those in the state are thoroughly reviewed and meet equal standards. **MichBusiness opposes any effort to preempt a state's regulatory authority over the market.**

Disrupting decades of precedent as to what constitutes an employer group health plan, and allowing a newly formed association to exist for the sole purpose of offering health coverage, without strong continuity of interest requirements, will result in the emergence of loosely organized AHPs, creating a destabilizing effect on existing markets in Michigan. This destabilization would be heightened if AHPs are able to cherry pick healthy populations from the small group and individual markets, or actively discriminate against riskier populations.

According to a recently published study by Avalere, the potential effects if the rule is finalized as proposed would be devastating to the small group market. It is estimated that anywhere from 1.7 to 3.2 million enrollees nationwide would shift out of the small group market into AHPs by 2022. Avalere estimated that new membership in AHPs would be primarily comprised of members from the small group market, totaling around 70-75% of new enrollees. The exit of these groups from the small group market would cause significant disruption and ultimately lead to a riskier population comprising the market and increased premiums.

This destabilization effect would be especially problematic in Michigan, where stability has been achieved in the small group market, especially in rates. On average, carriers in Michigan have only increased their rates 4% in small group market for 2018. Similar nominal rate increases have been consistent in past years, with an average 2.5% increase in 2017 and 1% increase in 2016. Any additional increase to small group rates as an effect of the AHP rule will surely be felt by our small businesses in Michigan.

To prevent the creation of such an environment, proper safeguards should be explicitly in place regarding the organizational structure of the AHP. This includes **maintaining existing regulatory authority over AHPs at the state and national level, and enforcing clear nondiscrimination rules that do not enable AHPs to siphon good risk from the community rated small group market.**

In sum, MichBusiness opposes any effort that could potentially cause disturbances in the stable Michigan small group market, as it would ultimately be a detriment to small businesses throughout the state. We believe that the AHP proposed rule, as it is currently fashioned, would cause significant instability to the well-functioning market and lead to higher premiums, less healthy risk pools, and overall uncertainty for many small businesses. It is our hope that DOL and other government agencies will design rules and regulations that promote market stability and expand access to coverage for quality and comprehensive care.

Thank you again for the consideration of these comments as you move forward crafting a final rule.

Sincerely,



Jennifer D. Kluge
President and CEO
ijkluge@michbusiness.org
586-393-8802