Blue Cross Blue Shield Blue Care Network of Michigan

Nonprofit corporations and independent licensees of the Blue Cross and Blue Shield Association

March 6, 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

Comments submitted electronically via http://www.regulations.gov

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

Dear Assistant Secretary Rutledge:

Blue Cross Blue Shield of Michigan (BCBSM) and Blue Care Network of Michigan appreciate 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 (AHPs).**

BCBSM and Blue Care Network have a strong presence in the Michigan small group market, with more than 293,000 members. Since 2015, Blue Cross' statewide small group rate trends have remained steady with minimal adjustments. After maintaining rates without an overall increase throughout 2015, Blue Cross customers saw a minimal 0.8 percent average increase in 2016, which then trended back down to a zero percent adjustment in 2017. In total, these positive trends have resulted in a less than one percent overall rate increase for Blue Cross' small group customers over the last three years. Such stability is greatly attributed to the level playing field in Michigan's small group market, which mitigates the possibility of adverse selection.

Broadening the formation and membership of AHPs will have a negative impact on the stability of our small group market, resulting in increased premiums and a fractured risk pool.

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, especially 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.

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 reviewing the proposed language, BCBSM wishes to provide feedback on provisions we believe are critical to prevent erosion of the existing small group market. We appreciate DOL's consideration of our concerns.

Nondiscrimination Provisions

BCBSM supports the nondiscrimination requirements contained in the proposed rule that **specifically prohibit using health status or claims experience to restrict membership, eligibility for benefits, or the ability to vary rates between employer members.**

BCBSM also believes that the rating factors permitted to apply to employer members within AHPs should be limited to the rating factors currently allowed in the small group market (3:1 age band; tobacco use; family size; and geographic rating areas). These provisions are absolutely critical to limiting adverse selection in the market and ensuring that AHPs do not have an advantageous regulatory environment relative to insurers in the community rated small group market.

State oversight and authority of fully and self-insured AHPs

BCBSM opposes any effort by DOL to preempt a state's regulatory authority over self-funded and fully insured AHPs. BCBSM supports the inclusion of a provision in the final rule to explicitly allow any state in which an AHP does business, not just the state of incorporation, to impose its regulatory authority over the plans. The final rule should make it clear that states will continue to have authority over these plans. This is necessary to protect consumers against potential fraud and insolvency issues as each state's regulators are best positioned to address the needs of its respective market.

Geography should be contiguous in nature

If the common geography test is retained, BCBSM supports including a provision in the final rule to require common geography boundaries to be contiguous in nature, and that AHPs are required to cover entire counties, rather than just a portion of a county. Without this specificity, there is significant potential for AHPs redlining and "carving out" healthy risk based on geography.

Effective Date

BCBSM recommends that the final rule take effect no earlier than January 1, 2020. Issuers are already in the midst of preparing products and pricing for the 2019 plan year and would face significant resource constraints getting additional plans to market for 2019. A January 1, 2020 implementation date allows adequate time to assess the impact AHPs may have on the market and allow issuers to properly develop plans and set rates.

Thank you again for the opportunity to comment on these very important issues.

Sincerely,

Sandra Fester
Vice President. Middle & Small Group Business
Blue Cross Blue Shield of Michigan