



March 6, 2018

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

Submitted Electronically

Re: Definition of Employer Small Business Health Plans (RIN 1210-AB85)

To Whom It May Concern:

The Small Business Legislative Council (SBLC) respectfully submits these comments on the proposed regulations on the Definition of Employer Small Business Health Plans published by U.S. Department of Labor (“DOL” or the “Department”) (RIN 1210-AB85).

The SBLC is an independent and permanent coalition of major national trade and professional associations whose goal is to maximize the advocacy and presence of small business on Federal legislative and regulatory policy issues, and to disseminate information on the impact of public policy on small businesses. The SBLC is the only small business association whose membership is comprised exclusively of trade and professional associations and, through its members and their members, it represents all sectors of the economy and a significant swath of the country’s small businesses.

The SBLC has consistently supported efforts to reduce the regulatory burdens for America’s small businesses and appreciates the DOL’s recent efforts in this area. Finding ways to reduce premiums and increase options in the small business health insurance marketplace is critical. However, in pursuing this goal, the SBLC urges the DOL to proceed cautiously to ensure that any new regulations relating to Association Health Plans (AHPs) will actually lower the costs across the small business insurance marketplace, rather than simply reshuffle the costs in that market.

The SBLC supports the proposed rules to allow working owners to be eligible to participate in AHPs, provided that limits are placed on the associations that can form AHPs to prevent certain working owners from being favored over others.

Allowing working owners to participate in AHPs will support the goal of making health insurance more broadly available in the small business arena. To make it clear which business owners are eligible to participate in an AHP, the DOL should include in its final rules, a clear test for determining who will qualify as a working owner.

Notwithstanding the foregoing, while the SBLC supports the expansion of AHPs to working owners, we are concerned about the implication of this change coupled with the proposed rules that would allow associations to be formed solely to sponsor AHPs. Taking these proposed rules together, we foresee a scenario in which associations formed solely for the purposes of sponsoring AHPs will accept as members only those working owners that will help their risk profile (and drive down their costs) and will reject other working owners who are higher risk.

As discussed further below, the proposal to allow for the inclusion of working owners should be maintained and expanded while the proposal to broaden which associations can sponsor AHPs should be significantly scaled back.

In order to prevent AHPs from simply becoming a means for employers with favorable risk factors to ban together to drive down their costs, while driving up the costs for others in the marketplace, the SBLC urges the DOL to continue limits against associations formed solely for the purpose of offering health insurance.

Historically, associations, like those that comprise the membership of the SBLC, were formed to bring businesses and individuals with common interests together to support certain industries and promote engagement among members. Even where these associations sponsored an AHP, the criteria for joining these types of associations were driven by the association's larger mission, rather than the impact that a member would have on the AHP's rates.

The proposed regulations would change existing rules to allow for a new type of association formed for the sole purpose of offering a health plan. The only requirements of the members of such an association is that they share some "commonality of interest" which could be as broad as simply operating in the same state.

Unlike associations that are formed and grown for purposes other than simply offering a health plan, the regulations as proposed, would leave a massive opening for associations formed exclusively of employers with favorable risk levels with no common purpose or interest beyond offering health insurance (and obtaining the lowest rates possible). Allowing these types of self-selecting groups will not have an overall effect of

lowering cost across the board but will instead simply decrease costs for those certain employers that are able to make their way in to such an AHP while driving up the costs for others.

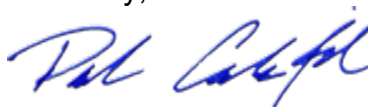
To prevent gaming of the rules that will increase costs for many small businesses, in establishing final rules for AHPs the DOL should to retain the prohibition against AHPs being formed solely to offer group health coverage (unless it can be shown that there is no trade association that is able and willing to offer a health plan to the employers) and, instead, require that an association be operational for a period of at least three years before it can form an AHP. The DOL should further maintain the prohibition against insurance carriers forming AHPs and expand that prohibition to other entities with direct conflicts of interest, such as health systems.

Additionally, to maintain parity across the small group health insurance marketplace, the same rating rules should apply to AHPs. While the proposed rules include provisions aimed at preventing discrimination on the basis of health statuses or past claims, they also contemplate the expansion of other rating tools that could be used as a proxy for discriminatory factors. These new rating tools, leave the door open for associations to use their membership criterial to create the most favorable pool of businesses possible in the AHP. This will have the likely effect of increasing the costs for others across the small group health insurance marketplace that don't have access to these rating rules. Instead, the same rating rules should apply to AHPs as apply to the rest of the marketplace.

As a final point, given the DOL's limited ability to monitor self-insured AHPs, the proposed rules should affirm the authorities of states to regulate in this area. To prevent against issues related to insolvency and non-payment of claims (as was seen in the context of Multi-Employer Welfare Arrangements before the states started regulating them) the DOL should continue to allow states to regulate self-insured AHPs. In doing this with respect to multi-state self-insured AHPs, the regulations should make clear that the state rules will govern only as to employers in that state.

On behalf of our members, we appreciate this opportunity to comment and look forward to working with the Department to working together to improve the health insurance marketplace for small businesses

Sincerely,



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