



March 6, 2018

The Honorable R. Alexander Acosta
Secretary of Labor
Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

RE: RIN 1210-AB85

Submitted electronically via www.regulations.gov

Dear Secretary Acosta:

Thank you for this opportunity to comment on this proposed rule. I write to you on behalf of Digital Insurance, LLC, known as OneDigital Health and Benefits in the employee benefits marketplace. We are a large national brokerage assisting 35,000 employer groups and their more than 730,000 employees.

Our service staff and large team of insurance professionals, licensed throughout all 50 states, assist our small group and large group clients with education, consultation, plan design and selection, and implementation of group health insurance and employee benefits solutions. We began focusing on the association plan methodology over the past two-and-a-half years after an acquisition of an existing agency with trade association health plans. There is great interest in these programs as is seen by our growth of 85% in the first year and 50% in the second year. We are experiencing roughly 95% retention of members and single digit rate increases. It is specifically this expertise in small group, large group, and AHPs that provide us with a unique perspective to assist in the response to your request for comments on this new rule.

General Comments

Increased Choice and Market Stability

We agree that AHPs, operated within a set of rules that protect the participants and provide for sound and fair administration will provide additional choice in the marketplace. As new and existing AHPs form, they will create plan options that cater to a variety of needs, rather than a one-size-fits-all approach. In this way, employers and individuals that choose to participate will have greater flexibility to select the health plan option that best suits their needs.

AHPs will also help to stimulate the marketplace. The new AHPs that emerge will give options to individuals who, due to the high costs in the marketplace and reduction in the ACA penalty, may go without coverage. Since AHPs would no longer be required to comply with state coverage

mandates, the resulting cost savings have the potential to attract many individuals with limited options, including those who take advantage of subsidies. These individuals may opt for a new AHP and forgo marketplace coverage and subsidies that provide the coverage they want, with access to the doctors and hospitals they need, at a more affordable price.

AHP Structure, Plan Operation, and Consumer Protection

The proposed rule allows the creation of additional multiple employer welfare associations (MEWAs). To date, the states have done a reasonable job of monitoring MEWAs and ensuring the protection of employers and employees. It is our recommendation that the states continue their oversight and that all AHPs register and file in the domicile state. Additionally, we recommend that there is a requirement for the AHP to register in all states in which their participant members reside. This will enable the insurance commissioners of the state to understand the needs and selections of their residents.

Voluntary employees' beneficiary associations (VEBAs) are trusts that fund employee benefits. MEWAs have no requirement to create this type of trust agreement. A group with a VEBA may or may not satisfy all the requirements of this proposed rule. Therefore, VEBAs should not automatically qualify as an AHP but must meet the same requirements as any other group seeking to form an AHP, namely, the commonality requirements.

Likewise, existing MEWAs that don't constitute an AHP under the proposed rule need to satisfy the same requirements as newly forming AHPs.

Notice Requirements

A number of areas in the proposed rule ask for input on the notice requirements and compliance with ACA and ERISA standards. The ERISA and ACA rules in existence today require a number of notices and communications that adequately inform participants of their rights and responsibilities. We believe that the existing ERISA's notice and reporting requirements should extend to AHPs and will adequately inform all parties. Therefore, we are not recommending any changes to those responsibilities.

ACA notice and reporting requires compliance from the plan. Modification to the Summary of Benefits and Coverage (SBC) will be necessary to properly notify participants that state mandates and ACA plan requirements may not necessarily apply to the AHP plan.

ERISA Definition of Employer

The modification to the "employer" definition is necessary to be able to aggregate unrelated employers as a single large employer. Currently, very few MEWA's constitute a single large employer. This subjects the individual employer groups to additional administrative requirements negating many of the benefits of banding together as a larger group. By allowing groups to band together as a "single employer", AHPs will gain access to claims data for wellness, intervention programs, etc. that are not typically available to groups under 100 lives. This will give AHPs the tools to design and operate programs that achieve better outcomes and have the propensity to better manage costs.

Organizational Structure

Both new and existing AHPs need to conform to the specific guidelines. These guidelines should serve to verify the compliance of the AHP structure, affirm that it is run by the member participants, and contain certain assurances that protect the plan members. Further, these governing documents should be a requirement when filing with the domicile state.

Commonality of Interest

We agree with the two methods of determining commonality. We would like to suggest that business consortiums of seemingly unrelated businesses could, in fact, accomplish the same thing. However, having said that, homogenous groups lend themselves to better risk, last longer, and are more cost effective.

Working Owners

This is, by far, the greatest departure from the norm. It provides new options to working owners, who do not meet the definition of an employee, who may, today, only qualify for the individual market. This will significantly provide more choice, broader coverage options, and greater cost management for these individuals.

It is advantageous to all working owners, who meet the definition of a “working owner”, to have the opportunity to participate in the plan, if they so choose. They should not be ineligible to participate merely because they have other subsidized coverage available to them. These working owners should be able to select the AHP regardless of any other plan offer unless it is a group plan offer through their own entity or business.

Determination of a “working owner” should be consistent with IRS rules that require state filing of the business. Insurance carriers currently gather information from these individuals, at the time of enrollment, to determine eligibility. We feel that this determination should continue to lie with the carrier utilizing the rules in place today.

We agree that working owners must be actively engaged in the business or trade that is the basis for the MEWA and corresponding AHP. To avoid adverse selection and create stability, AHP plan rules must require employers to select the same plan as their employees rather than choosing a richer benefit plan for themselves.

Nondiscrimination

Prohibiting AHPs to treat employers differently will end up mirroring the outcomes we currently see in the individual and small group markets. These limitations create no economies of scale and no advantage. In essence, this prohibition will only create mini-exchanges that will end up with fewer choices and high cost, just as we’ve seen in the current marketplace. When risk and premium don’t match, there comes a point at which low risk individuals and groups will no longer bear the cost of the high risk individuals. The departure of healthier individuals results in a pool of

participants that are sicker and utilize more service, which drives up cost.

To avoid this “death spiral”, there must be an incentive for the healthy individuals to remain. Healthy groups remain when their premium matches their risk. They reap the reward of promoting and achieving healthier lifestyles and better managing their health care expenses. Groups will understand having additional cost in years where they experience higher claims and utilization. These groups, however, with the incentive of knowing that they will benefit in future years when they have better experience, i.e. lower claims and utilization, will find work toward healthier behaviors and management of expense. This is in line with successful operations and best practices in the large group market. It creates a teamwork of sorts that incent all players to take responsibility and to improve results. Without this interplay between risk and premium, there is no incentive to modify behaviors, spending, or even take an active role in looking for better cost and treatment options. In this way, we experience the removal of consumerism from the marketplace and ultimately higher utilization of expensive options that continue to drive costs up.

If the purpose of AHP is to create the choice and flexibility that exist for large groups, then an AHP will need to operate in a similar fashion. Knowing and understanding claim experience, i.e. the direct correlation between the cost and use of benefits, is what drives the right behaviors. The AHP rules and requirements should incorporate the best practices of large groups to ensure the success and longevity of the entity.

Digital Insurance values the opportunity to provide input on the proposed rule and offers its services to you as you work through the comments. Let us know if we can be of any assistance to you in this process. Please feel free to contact me at (770) 296- 7254 or abechtold@onedigital.com.

Sincerely,

A handwritten signature in cursive script, reading "Annette Bechtold". The signature is written in black ink on a white background.

Annette Bechtold
SVP, Regulatory Affairs and Reform Initiatives
OneDigital Health and Benefits