



March 5, 2018

The Honorable R. Alexander Acosta
Secretary of Labor
c/o Office of Regulations and Interpretations
Employee Benefits Security Administration
ATTENTION: DEFINITION OF EMPLOYER – SMALL BUSINESS HEALTH PLANS RIN 1210-AB85.
U.S. Department of Labor, Room N-5655
200 Constitution Avenue, NW
Washington, DC 20210

Dear Mr. Secretary:

Our primary concern in the proposed regulation is related to the non-discrimination provisions affecting rating rules and how that will impact existing and successful Association Health Plans.

Dillon Health is an employee benefits brokerage with expertise in healthcare reform and serves as the “Master Broker Consultant” and “Endorsed Broker” for 7 Association Health Plans (AHP’s). Some of these relationships operate as “MEWA’s” (Multiple Employer Welfare Arrangements) under ERISA that can have health insurance options that are either fully-insured or self-funded.

Our firm works with Associations and their employer members to implement programs that are more affordable than many options available to them. To do this, we need to have a strong understanding of insurance carriers, the products they offer and their willingness to learn and be innovative in the marketplace. These plans are complicated and expensive to run and the overwhelming majority of insurance carriers and Third-Party-Administrators (TPA’s) do not have the capability, experience or background to understand the nuances of running a member trade Association.

Association Health Plans are not a “silver bullet” solution to fixing healthcare in our country even under the best underwriting conditions. In many cases AHP’s can be a viable option for quality and reasonably priced healthcare for employers. Putting it all together takes time and is complex.

In addition, I personally served in the role as Executive Director and served as the administrator of a Home Builders Association Health Insurance Program for 10 years that had over 800 small employer member companies and 19,000 lives at its peak. Dillon Health is licensed in every state in the country including the District of Columbia.



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Non-discrimination concerns

- 1) The proposed goal of offering Association Health Plans to more employers is encouraging. However, the non-discrimination language will result in “adverse selection” to the extent that an AHP is forced to offer insurance to an employer whose health and claims risk is substantially higher than that of existing employers in the AHP.
- 2) We represent non-discriminatory plans today given the “adjusted community rating” terms in the Affordable Care Act for individuals and small group employers (defined as under 50 employees or under 100 employees depending on the state) where the only allowed underwriting is by geographic location, tobacco use, and age of the insureds. The use of actual or expected health status or claims experience to set group premiums is not allowed under the ACA.
- 3) Large employers (over 50 employees or over 100 employers in some states) all have underwriting based on actual health status and expected claims of individuals in the employer group and all self-funded employers underwrite for these factors no matter the size. So one single employer with over 50 employees will have more negotiating power by regulation than an AHP consisting of 500 employers under the proposed non-discrimination language.
- 4) An example of how the non-discrimination provision rule will impact an AHP and eventually harm an AHP is the following:
 - a) An existing Association Plan has an employee rate of \$400 per month after using underwriting standards based on actual and expected health status and claims experience on all of the employers and the employees and their families.
 - b) A prospective existing large group employer to the AHP with 75 employees that currently utilizes the same underwriting standards as above based on their claims and expected claims experience has a current rate of \$600 per month per employee.
 - c) Clearly the prospective employer group with the current \$600 rate and 75 employees will want to join the AHP rate that has an employee rate of \$400. The net result is the AHP receives \$180,000 less ($\$200 \times 75 \text{ Employees} \times 12 \text{ Months} = \$180,000$) per year in premium than their risk justifies.
 - d) Since the expected claims for the prospective employer should cost the AHP \$180,000 more in claims than the premium they received, all the existing employer groups will receive an increase in their rates until the entire program is extinguished. The healthier groups will migrate to lower priced options or alternative products. This scenario will not be an exception to the rule but the most likely scenario. The current practice of MEWA’s today, which allows them to rate the current risk of new employer’s works effectively. If AHP’s are forced to accept all employers, the results will be catastrophic.
- 5) There are existing Association Health Plans that are running successfully today and the proposed language will negatively impact those AHP’s.
- 6) Including individuals in this regulation does so at the detriment of small employers participating in AHP’s due to adverse selection. We understand the problems facing the individual market. This issue existed prior to the ACA and the efforts being made on short-term plans are a step in the right direction for rate relief for sole proprietors, individuals and families.

Besides the most important underwriting component allowing Association Health Plans to have a stable risk pool and rating policies, there are three additional factors that must be considered for successful Association Health Plans. As someone who has set-up Association Health Plans, I do not see a scenario with the proposed non-discrimination language of how a carrier would be interested in providing coverage for a new Association Health Plan.

Traits of Successful Association Health Plans

- 1) No adjusted community rating for Association Health Plans. Each employer must be individually rated to be offered coverage initially into the plan.
- 2) A strong connection and loyalty from the membership to the Association utilized the organization as a trusted resource for members as an advocate for industry challenges.
- 3) Coverage options and strong administrative support are essential. Creating plan designs and benefits which contain healthcare costs while offering small employer choices is essential for success. In addition, strong partnerships with benefits consultants and ERISA legal experts is critical to lead AHP's members who serve as a fiduciary or administrator to the plan for compliance with DOL, IRS, and HHS regulations.
- 4) Finally, the partnership with the insurance carrier is vital to an Association Health Plan success. It cannot be understated how important the insurance carriers understanding of the Association demographics, strong physician utilization review and claims management ability, large provider network access and client satisfaction is to a mutually beneficial relationship.

Recommendations

- 1) Delete the non-discrimination provision completely because it works against the Administration's goal of providing affordability for more employers through an AHP.
Or
- 2) Define Association Health Plans as a group of employers acting as a Single Large Group Employer for health insurance purposes of ERISA which is defined as (over 50 employees or over 100 employees by each state) which will allow the AHP to rate health or expected medical claims on each individual employer for membership into the plan
Or
- 3) If for some reason, the non-discrimination rules are adopted in current form, it is essential existing Association Health Plans be grandfathered in and not subject to the proposed rules.

Thank you for your efforts to bring forward solutions to offer better coverage to employers through innovative Association Health Plans. If we may be of any assistance please let us know.

Sincerely,

A handwritten signature in blue ink that reads "Mike Dillon, Jr." with a stylized flourish at the end.

Michael F. Dillon, Jr.
Chief Executive Officer/Employee Benefits Broker