



March 6, 2018

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

RE: Definition of Employer - Small Business Health Plans RIN 1210-AB85

Dear Secretary Acosta:

The Council for Affordable Health Coverage (CAHC) welcomes the opportunity to comment on the proposed rule regarding association health plans (AHP) and expanding the definition of “employer” under Section 3(5) of the Employee Retirement Income Security Act of 1974 (ERISA). CAHC is a broad-based alliance with a singular focus: bringing down the cost of health care for all Americans. Our membership represents a broad range of interest-organizations representing small and large employers, manufacturers, retailers, insurers, patient groups, and physician organizations. As such, we appreciate the opportunity to comment on this proposed rule as it has implications for the continuing evolution of an operational, competitive, and affordable US health market.

Background

Employers are the largest purchasers of health care services and coverage in this country, and they are leading the way in innovation and the shift toward value in the private market. While premiums in the employer market, where the vast majority of Americans receive their coverage, have remained relatively stable compared to the individual market, costs are rising more than twice as fast as wages. This is largely due to rapid increases in the cost for medical services, and federal mandates and regulatory burdens under the Affordable Care Act (ACA). In fact, these rising costs are a primary contributor to premium growth, and as costs continue to outpace economic growth, it makes coverage less affordable and more out of reach for millions of Americans.

The CAHC supports efforts to expand options in the health care marketplace for employers to pool together and lower costs. AHPs have been a concept long supported by business owners to make health insurance both accessible and affordable to their employees and families. AHPs allow employers of similar industries or geographic areas to form pools which would have greater leverage in the health care marketplace and could manage the administrative costs of plans in a more cost-effective manner. Within this comment letter, we respectfully offer several recommendations we believe would strengthen the intended outcomes of the proposed rule.

Rating Rules

By expanding the definition of “employer,” the proposed rule makes it possible for businesses of all sizes to join AHPs, thereby sharing administrative expenses and leveraging access to benefits at more cost-effective price points. CAHC recommends, in the interest of maintaining a stable risk pool under the proposed rule, that newly forming AHPs be required to establish annual open enrollment periods for employers and employees entering the AHPs. Further, CAHC recommends that AHPs assess participating

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firms and offer limited premium variations so that AHPs remain viable and employer/employee access to affordable health care is consistent.

Defining AHP Eligible Associations

The expanded definition of “employer” within the proposed rule aims to increase the number of AHPs comprising medium and small businesses, and microenterprises and working owner companies. While these newly constituted AHPs will be able to leverage more comprehensive and cost-effective health care for their members, CAHC suggests that parameters for these AHPs should be more clearly defined.

- The -proposed rule allows AHPs to include members from similar industries or geographic areas. CAHC recommends that any Association eligible to form an AHP must exist prior to serving as the “employer” in a newly formed AHP and the Association should have other reasons to exist—and offer other benefits of membership—beyond forming a group or association for the sole purpose of acquiring affordable health care benefits. Further, Associations should have existed for a period – three to five years – prior to serving as the “employer” within the new rule.
- We suggest a more robust AHP market would benefit greatly by expanding the commonality of interest requirement beyond same trade, industry, line of business or profession to encompass trade groups and coalitions that are national in scope and have an established affinity.
- We also urge that the final rule enable organization around business size (i.e., “small business”), and allow the AHP to establish minimum group size for their programs. Likewise, each AHP should be allowed to determine whether it will include self-employed individuals, which would give the plan the flexibility to address market demands.
- The final rule should not prohibit self-employed individuals from joining an AHP if they have the offer of spousal coverage. Consumers should have more robust options and the spousal coverage offered may not work best for their individual health needs.
- Finally, the “employer” Association should be required to demonstrate the capacity to oversee the administrative requirements inherent in managing a complex health care plan. Associations that seek to form AHPs, and serve as “employers’ under the rule, should have the resources to manage the health care plans that are created on their members’ behalf. Without the capacity to do so, AHPs may be unable to sustain member plans over the long-term leaving employee members vulnerable

These recommendations are intended to assure that each association seeking to serve as an “employer” under the new rule is solid, exists independent of the AHP to be managed, and has the capacity to serve in this additional role. These recommendations will help to assure that businesses and their employees are enjoying access to affordable health care, benefitting from continuity of care, and evolving in a regulatory climate that protects them from fraudulent groups hoping to benefit from this new definition of employer.

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Conclusion

Employers are seeking more options to combat the relentless rise in health costs and premiums. A robust AHP market that leverages scale and bargaining power will help. As the AHP proposed rule raises significant issues, opportunities, and concerns to achieving this goal, we recommend the Department conduct listening sessions with stakeholders to fully understand the market needs and concerns beyond those expressed in comment letters to the proposed rule. We encourage the Department to work to make AHPs a more significant option for employers.

Sincerely,

Joel C. White
President

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