



February 20, 2024

Lisa M. Gomez
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Washington, D.C. 20210

Re: RIN-1210-AC16 –Definition of “Employer” – Association Health Plans
88 Fed. Reg. 87968 (December 20, 2023)

Dear Assistant Secretary Gomez:

The American Cancer Society Cancer Action Network (ACS CAN) appreciates the opportunity to comment on the proposed rule related to the definition of “employer” for Association Health Plans (AHPs). ACS CAN is making cancer a top priority for public officials and candidates at the federal, state, and local levels. ACS CAN empowers advocates across the country to make their voices heard and influence evidence-based public policy change, as well as legislative and regulatory solutions that will reduce the cancer burden. As the American Cancer Society’s nonprofit, nonpartisan advocacy affiliate, ACS CAN is more determined than ever to end cancer as we know it, for everyone.

More than 2 million Americans will be diagnosed with cancer this year and more than 18 million Americans living today have a history of cancer.¹ Having comprehensive and affordable health insurance coverage is a key determinant for surviving cancer. Research from the American Cancer Society shows that uninsured Americans are less likely to get screened for cancer and thus are more likely to have their cancer diagnosed at an advanced stage when survival is less likely and the cost of care more expensive.²

ACS CAN has opposed previous federal initiatives to encourage the growth of AHPs because these plans do not provide comprehensive coverage, could damage the non-AHP individual and small group markets, and inadequately address issues of plan solvency and regulatory oversight, especially in light of the long record of AHP fraud and solvency problems.

We support the Department’s proposal to rescind the previous AHP rule finalized in 2018.³ We agree that the 2018 Rule’s business purpose standard far exceeded what constitutes an employer under ERISA. As we noted in our comments on the 2018 proposed rule, the 2018 Rule’s interpretation could result in market segmentation, which could result in increased premiums for qualified health plans in the Marketplaces. We also agree with the Department that the 2018 Rule’s geographic commonality

¹ American Cancer Society. *Cancer Facts & Figures 2024*. Atlanta: American Cancer Society; 2024.

² Zhao, J., Han, X., Nogueira, L., Fedewa, S.A., Jemal, A., Halpern, M.T. and Yabroff, K.R. (2022), Health insurance status and cancer stage at diagnosis and survival in the United States. *CA A Cancer J Clin*. <https://doi.org/10.3322/caac.21732>.

³ 83 Fed. Reg. 28912 [hereinafter “2018 Rule”].

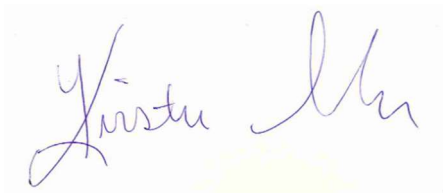
standard (e.g., that employers in the group or association had to be in the same industry or geographic region) exceeded prior interpretation of ERISA. In our comments on the 2018 proposed rule we noted that the proposed geographic commonality standard would create uncertainty in enforcement for AHPs sold across state lines. We agree with the Department's decision to rescind the 2018 Rule's working owners' standard that allowed sole proprietors to constitute an employer for purposes of forming an AHP. We agree that such a policy is inconsistent with ERISA as a law created to protect employees of private sector firms, since a working owner may not have any employees.

While we support the Department's decision to rescind the 2018 Rule, we urge you to engage in further rulemaking to strengthen health insurance markets, specifically to codify pre-2018 Rule guidance and clarify that employers offering AHPs must be bona fide employer groups and associations that meet certain standards including: (1) an established business purpose that functions unrelated to the provision of benefits; (2) employers share a commonality of interests unrelated to the provision of benefits; and (3) that employers who participate in the benefit program are able to exercise control over the program in both form and substance. We believe that codifying these requirements will help strengthen health insurance markets by reducing market segmentation. As part of this future rulemaking we would urge the Department to provide clarification for multiple employer association-based group health plans.

CONCLUSION

Thank you for the opportunity to comment on the definition of "employer" related to Association Health Plans. If you have any questions, please feel free to contact me or have your staff contact Anna Schwamlein Howard, Policy Principal, Access and Quality of Care at Anna.Howard@cancer.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kirsten Sloan", is written over a light yellow rectangular background.

Kirsten Sloan
Managing Director, Public Policy
American Cancer Society Cancer Action Network