



Coalition Against Insurance Fraud

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Dennis Jay
Executive Director

A national coalition of consumers, government agencies and insurers dedicated to combating all forms of insurance fraud through public information and advocacy.

January 10, 2018

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

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

Via Electronic submission only to: <http://www.regulations.gov>

Dear Reviewers and Interested Parties,

I write on behalf of the Coalition Against Insurance Fraud to voice our opposition to the proposed broadening of the ERISA criteria [Section 3(5)] to permit “employee welfare benefit plans” and “group health plans,” more commonly called Association Health Plans (AHPs). We are well-acquainted with this issue. The Coalition was deeply involved when ERISA scams became a national epidemic more than a decade ago. Our concerns have only increased based on health insurance industry changes, the rise of technology used to commit insurance fraud, and the heightened risk of harm to innocent Americans.

The Coalition Against Insurance Fraud is a national anti-fraud alliance of consumers, insurance companies, government agencies and others combating all forms of insurance fraud. The Coalition was founded 25 years ago and includes more than 160 member organizations. On their surface, Association Health Plans are well-intended efforts to help small businesses obtain affordable health coverage. But small businesses and their workers will face a large and intolerable risk of fraud should this change occur.

Contrary to this administration’s stated goals, such a regulatory change would federalize oversight of AHPs. This would largely exempt them from long-standing insurance oversight by more localized and well-empowered state regulation. The over-stretched U.S. Department of Labor (DOL) would have to regulate potentially thousands of new AHPs. Such federal usurping of state authority removes the consumer from protection of the large insurance regulatory network developed by all 50 states, the District of Columbia and federal territories. This will create a serious oversight vacuum – thus permitting

fraud to spread rapidly. Without local state oversight, shady operators will be emboldened to sell bogus health coverage to vulnerable small businesses around the U.S., with a potentially devastating impact on policyholders. Federalizing AHPs, especially with a 50-state regulation system already in place, is not the answer. States and the federal government should share oversight as currently exists under the ERISA regulations in place.

Most states also have personnel and procedures in place to shut down crooked health plans by issuing emergency cease-and-desist orders within days, while DOL can take several years. DOL must obtain a temporary restraining order and preliminary injunction. To do so, DOL must convince a federal court at a pre-trial hearing that DOL likely would prevail at trial. Illegal operators, meanwhile, are structured to defraud large numbers of policyholders quickly and move assets offshore while DOL slowly gathers the complex and large volume of information needed to meet federal evidentiary requirements.

Fraudulent AHP operators will exploit vulnerable citizens. History suggests illegal health plans will aggressively exploit vulnerable small businesses if AHP regulatory change passes. These fraudsters solicit small businesses desperate for affordable health coverage, take their insurance premiums, pay few claims and funnel the cash to off-shore bank accounts.

After the last wave of bogus health plans in 2002-2004, the Government Accountability Office reported 144 unauthorized entities peddled bogus health coverage to more than 200,000 policyholders. The cons stole at least \$250 million in lost premiums and unpaid medical claims. Many victims were forced to pay large medical claims out of their own pockets, with serious impact on their finances and often health.

Since that time, states have reinforced their efforts to detect, stop and prosecute these criminal enterprises. The federal government – not so much.

Federal oversight also will encourage bogus health plans to spread by exploiting confusion over who regulates them. This will greatly complicate the job for state and federal regulators, while defrauding innocent Americans who need quality health care at a fair price.

Since our founding in 1993 the Coalition Against Insurance Fraud has served as a non-partisan advocate for America's consumers in the fight against insurance fraud. We appreciate your considering our insight and comments in opposition to this proposed regulatory change. Should further information or clarification be necessary, or if there is any further role we may play in addressing this important issue, please contact me at any time.

Sincerely,



Matthew J. Smith, Esq.
Director of Government Affairs & General Counsel