

PUBLIC SUBMISSION

Received: February 22, 2018 Status: Pending_Post Tracking No. 1k2-91n6-srvt Comments Due: March 06, 2018 Submission Type: API
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Docket: EBSA-2018-0001
Definition of Employer Under Section 3(5) of ERISA-Association Health Plans

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Definition of Employer Under Section 3(5) of ERISA-Association Health Plans

Document: EBSA-2018-0001-DRAFT-0213
Comment on FR Doc # 2017-28103

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General Comment

My company obtains its health insurance from an Association Health Plan. This vehicle of obtaining coverage has allowed me to offer my employees coverage and I wouldnt have been able to find the same coverage in small group community-rated market (or exchange). Expansion of AHPs is a great thing for healthcare and offers small and medium sized businesses more options for coverage and also provides for affordability.

I am writing today to express concerns about the proposed EBSA-2018-0001. Association Health Plans offer small and medium sized businesses a way to offer compressive and affordable benefits to their employees. This is critical when companies are competing for talent. I applaud the goal of expanding AHP coverage, however, there are several provisions in the proposed rule that would negatively impact the market and prevent the expansion of AHPs, while also having significant impact on current insurance markets that could result in rates increasing or selection decreasing:

1) Essential Benefits The rule must change to maintain essential benefits requirement for Association Health Plans. Failure to make this change will result in only healthy populations drawing towards AHPs and provide unhealthy adverse selection in Individual markets.

2) Require associations to be pre-existing - AHPs should only be able to be formed by existing associations whose leader is willing to serve as a fiduciary. Without this requirement, there could be significant fraud and abuse. For hundreds of years, associations have been serving the interests of their membership. By requiring AHPs to only be able to be offered through an existing Association, this ensures that members needs are represented in the insurance product offerings of the marketplace. Associations should be required to have been in existence for at least 5 years prior to offering an AHP to their existing membership.

3) Rating rules - AHPs should be able to use cost data in assessing rates at the employer level, as is current practice under Washington State law. Failure to allow this factor in rating would inherently result in cross-subsidization and discourage the use and expansion of AHPs. Using one rate for all results in adverse selection, cripples the expansion of AHPs, creates unhealthy community rated/individual markets, and will work against the Administrations goal of providing affordability through AHPs.

States already have community-rated products and rates (that use the one rate for all approach) and products dont meet the needs of business.

4) States Rights -

All states should have the right and ability to set rating rules as well as determine if products that go across state lines should be permitted. Without this provision, carriers could avoid regulation and oversight, which would leave unhealthy adverse selection pools throughout the country. The proposed rule should be amended to ensure that all AHPs comply with local state regulations.

5) AHP membership AHPs should retain the right to set business rules as to what membership requirements are (including company size and/or structure). Associations should be allowed to determine if they include working owners (and spouses) this expands coverage to millions of sole proprietors.

6) Effective date The effective date of this rule needs to be 2020 or later in order to allow enough time for insurance companies to react and adjust without artificially inflating prices (as we saw in abundance with the implementation of ACA). Lack of proper time would result in small businesses having even higher costs and insurance

companies continuing to profit in the wake of change.

The proposed rule would cause my employee premiums to increase and disrupt the marketplace (again). I am concerned that if the proposed rule does not change that my choice and ability to offer benefits will be at risk.