



AMERICAN
PSYCHOLOGICAL
ASSOCIATION
PRACTICE ORGANIZATION

February 28, 2018

Jeanne Klinefelter Wilson
Deputy Assistant Secretary
Employee Benefit Security Administration
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Re: Definition of “Employer” under Section 3(5) of ERISA Association Health Plans RIN 1210-AB85

Dear Deputy Assistant Secretary Wilson:

I am writing on behalf of the American Psychological Association Practice Organization (the Practice Organization), an affiliate of the American Psychological Association (APA). APA is the professional organization representing more than 115,700 members and associates engaged in the practice, research and teaching of psychology. The Practice Organization advocates on behalf of psychologists engaged in the practice of psychology in all settings. The Practice Organization thanks the Employee Benefits Security Administration (EBSA) for this opportunity to provide comments on the proposed rule on the definition of “Employer” under Section 3(5) of the Employee Retirement Income Security Act (ERISA) – Association Health Plans (AHPs).

Background

Psychologists are doctoral level providers with on average seven years of graduate education including extensive clinical work. They provide critical mental and behavioral health services including psychotherapy, testing, and health and behavior assessments and interventions. Psychologists are the leaders in assessing mental health and pioneered the development of health and behavior services to assist patients struggling with physical health problems.

Under the Affordable Care Act (ACA), health insurance issuers in the individual and small group (less than 100 employees) market must offer the Essential Health Benefit (EHB) package. To satisfy the EHB requirements, plans must include and set an appropriate balance between ten specific categories of services, including mental health, behavioral health and substance use disorder services.

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The current regulatory requirements for coverage under AHPs varies, depending upon whether the coverage is for individuals or groups, and in the case of the latter, whether it is small or large group coverage. AHPs are often regulated as large group coverage under the ACA as they typically provide coverage to many people employed by several different employers.

EBSA's Proposal

EBSA is proposing to revise ERISA Section 3(5) to allow more employers to join an employer group or association to sponsor a group health plan. EBSA maintains that the goal of the rulemaking is to expand access to affordable health coverage, especially among small employers and self-employed individuals. As EBSA acknowledges in the preamble to the proposed rule the changes this revision could bring are unclear and potentially detrimental.

Under the proposed rule, the AHP's size would be determined by the number of employees in the entire AHP, not just the employees for one company participating in the AHP. Accordingly, more AHPs would be regulated as large group coverage and thus exempt from the ACA's rules for individual and small group coverage, including the rules for EHBs and ratings. This would leave more Americans in danger of having incomplete healthcare coverage as the health plans offered through AHPs would not be required to provide the EHB package.

Psychology's Concerns

The EHB Package

The APA Practice Organization is especially concerned that AHPs will not be required to provide the EHBs now required under the ACA. Without EHB protection many individuals may find themselves in plans that do not provide coverage for mental health, behavioral health or substance use services. In such cases the results could be catastrophic as individuals may lose access to critically important psychological services. Without such coverage they may be forced to pay considerable sums of money out of pocket or fail to continue with treatment. Individuals with mental health issues may not receive the psychotherapy services they need to remain active and contributing members of society. Adults with cognitive impairment and families of children with learning disabilities will be forced to dig into their savings to pay for critical assessment services. At a time when the opioid epidemic is killing thousands of Americans, individuals with substance use disorders will lose both outpatient and inpatient coverage, allowing their life-threatening behaviors to go unchecked and delaying their hopes of recovery from the ravages of addiction.

The Potential for Discrimination

EBSA notes that AHPs will still be subject to non-discrimination requirements so they cannot condition employer membership in the group based on health factors. However, AHPs may still discriminate based on other factors such as age, gender or occupation. AHPs could, for example, set very high rates for older patients or employees in certain

industries that are likely to have a greater risk of accidents or injuries. People in these categories will lose healthcare coverage if the only plans offered to them impose high premiums they cannot afford.

The Impact on the Insurance Market

By its very definition, insurance is the spreading of risk. The larger the pool, the lower the financial impact claims should have on any one individual or group within the pool. In operation, however, the insurance market involves more than just numbers of people. There would be little cost savings, for example, in a large pool of only high-risk individuals.

It is for this reason that the insurance market is vulnerable if some plans can cherry pick their beneficiaries. Young, healthy people will seek out bare bone plans offered at lower premiums, believing they don't need coverage for diseases or conditions they do not have (yet). Too many cases like this will cause imbalance in the market as other plans will then have too high a concentration of older, sicker beneficiaries. Some plans, especially those designed for the individual and small group markets, may see premiums climb so high that either beneficiaries drop coverage or employers can no longer afford to offer it.

Our Recommendation

Given the reasons listed above and EBSA's own uncertainty about what outcomes could result from the changes it is proposing, the APA Practice Organization recommends that EBSA not adopt this proposed regulation to revise ERISA section 3(5). There are too many unanswered questions about what its impact could be and the risks it presents to both individuals and the insurance market are too high to gamble with. Since the ACA was enacted in 2010 over 20 million previously uninsured people now have health insurance. We cannot afford to return to the days when Americans were forced to forego necessary treatment or risk medical bankruptcy because they lacked decent healthcare coverage.

We thank EBSA for the opportunity to present these comments. If you have any questions please contact Diane M. Pedulla, Director, Regulatory Affairs at 202-336-5889 or by email at dpedulla@apa.org.

Sincerely,



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Executive Director for Professional Practice