

**Blue Cross and Blue Shield of Minnesota**

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March 2, 2018

The Honorable Preston Rutledge  
Assistant Secretary of Labor  
Employee Benefits Security Administration Office of Regulations and Interpretations  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

Submitted via the Federal Regulations Web Portal: <http://www.regulations.gov>

**RE: Definition of ‘Employer’ under Section 3(5) of ERISA – Association Health Plans (RIN 1210-AB85)**

Dear Assistant Secretary Rutledge:

Blue Cross and Blue Shield of Minnesota (Blue Cross) appreciates the opportunity to comment on the Definition of ‘Employer’ under Section 3(5) of ERISA – Association Health Plans (Proposed Rule). Blue Cross is a non-profit health service plan corporation that provides coverage to approximately 2.9 million persons in both the public and private markets.

Blue Cross has long championed a well-functioning private market with a broad array of coverage options at varying price points. We recognize that Association Health Plans (AHPs) play a role in providing employers with an alternative choice based on affiliation. However, it remains critical to guard against harm to traditional markets in the name of expanding other options. Accordingly, Blue Cross believes there must be active oversight of AHPs, prohibition of discriminatory practices, and safeguards against harm to traditional markets.

Blue Cross and Blue Shield of Minnesota strongly supports the comments submitted by the Blue Cross and Blue Shield Association and America’s Health Insurance Plans. We offer the following specific comments on the proposed federal regulations on the Definition of ‘Employer’ under Section 3(5) of ERISA – Association Health Plans for your consideration.

**Preserving State Regulation**

Blue Cross strongly supports the Proposed Rule’s preservation of state regulation of AHPs. The existing dual regulatory structure – with both state and federal oversight – is critical to maintaining the current stability of the traditional small group market. Additionally, given the history of AHPs, this dual regulatory oversight is important for preventing fraud that has occurred in the past through multiple employer welfare arrangements (MEWAs), harming small employers and their employees. State flexibility to establish market rules and consumer

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protections is an important tool in maintaining stability and preventing harm. State regulators are best positioned to understand their specific local market dynamics and market players, enabling them to more quickly identify and address necessary consumer protections.

**Nondiscrimination Should Apply Beyond Health Factors**

Blue Cross strongly supports the prohibition against eligibility and rating based on health factors but urges the Department to go further. Just as the Department recognizes the importance of mitigating risk selection based upon health factors, the same harms could occur if AHPs are permitted to base eligibility or rating on other factors, including but not limited to gender or age. We urge the Department to expand the factors upon which AHPs may not discriminate, providing greater market and consumer protections and mitigating harm to the traditional small group market, while still expanding available coverage options for employers.

Further, Blue Cross urges the Department to require existing AHPs to come into compliance with nondiscrimination requirements as quickly as possible, but no longer than six months following the publication of a final rule.

**Do Not Expand AHP Participation to “Working Owners”**

Blue Cross urges the Department to limit eligibility for participation in AHPs to current eligible employers. While we recognize the goal of permitting more coverage options to self-employed individuals through the addition of a new definition of “working owners,” such an expansion would severely undermine any gains states like Minnesota have made toward premium stabilization in the individual market. This drastic departure from existing policy to permit individuals to join an AHP perpetuates adverse selection detrimental to market stabilization efforts.

We appreciate your consideration of our comments. If you have any questions or want additional information, please contact me at [Scott.Keefer@bluecrossmn.com](mailto:Scott.Keefer@bluecrossmn.com).

Sincerely,



Scott Keefer  
Vice President of Public Affairs  
Blue Cross and Blue Shield of Minnesota