



March 5, 2018

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The Honorable R. Alexander Acosta
Secretary, U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Mr. Preston Rutledge
Assistant Secretary, Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

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

Dear Secretary Acosta and Assistant Secretary Rutledge,

The American Federation of State, County and Municipal Employees (AFSCME) is a union representing more than 1.6 million active members and retirees throughout the United States. AFSCME appreciates the opportunity to comment in response to this proposed rule.

AFSCME strongly opposes the proposed rule on Association Health Plans (AHPs). As proposed, the rule will weaken the individual and small group markets that are cornerstones to providing health insurance coverage to millions of individuals. Though the rule may lower costs for some employers in the near term, it would undoubtedly increase costs and severely limit choice for other employers and individuals, particularly those with pre-existing health conditions. Even for those employers who may experience short term cost reductions, the longer term financial impact on employers and health plan participants is unclear. We are also cognizant of the sordid history of fraud and insolvency surrounding AHPs, and fear that the rule would return us to the days when desperate consumers were sacked with insurmountable medical bills and no health coverage.

With the passage of the Affordable Care Act (ACA), the playing field between AHPs and the small-group and individual markets was substantially leveled. The proposed rule would not require AHPs to meet the standards required of ACA-compliant plans, and would allow AHPs to be structured to attract younger, healthier consumers, thus leaving costlier ACA-compliant risk pools in their wake. If markets are distorted in this way, costs will increase and plan choices will decrease for employers and individuals in the remaining ACA-compliant markets.

American Federation of State, County and Municipal Employees, AFL-CIO

TEL (202) 429-1000 FAX (202) 429-1293 TDD (202) 659-0446 WEB www.afscme.org 1625 L Street, NW, Washington, DC 20036-5687

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Further, we are concerned that the proposed rule will allow for higher premiums to be charged to businesses based on employees' age, gender or industry. Currently, AHPs are regulated by the "look-through" doctrine – meaning that AHP products sold to small employers are subject to rules governing that market, and AHP products sold to individuals are likewise subject to the rules for those markets. The proposed rule, however, would view an AHP as a single plan providing large employer coverage, making it exempt from the individual and small-group market protections.

Such protections have created tangible benefits for health plan participants. Before the ACA's market protections, plans were free to exclude coverage for maternity care, prescription drugs and behavioral healthcare, among other health services declared essential under the act. The ACA also prohibits plans from basing premiums on anything other than age, tobacco use, family size and geographic region. The proposed rule would allow plans to exclude vital health services, and to allow associations to base premiums on other factors, including gender or industry. This is clearly discriminatory.

Finally, we oppose any attempt to exempt AHPs from state regulations. States have taken the lead in consumer protection regarding insurance coverage and plan solvency, and to strip them of these vital powers would leave millions of individuals and families vulnerable to exploitation by unscrupulous promoters of substandard plans.

If the Department of Labor moves forward with finalizing this rule, we urge you to maintain both the nondiscrimination provisions and states' full authority to regulate AHPs. These components are critical backstops to counter the detrimental effects of the rule.

Again, AFSCME appreciates the opportunity to comment on this important proposed rule. Please do not hesitate to call me with any questions.

Sincerely,



Steven Kreisberg
Director of Research and
Collective Bargaining Services

SK/bd