



March 5, 2018

US Dept. of Labor, Employee Benefits Security Administration
Office of Regulations and Interpretations
200 Constitution Ave. NW, Room N-5655
Washington, DC 20210

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

Submitted electronically via Regulations.gov

Dear Sir or Madam:

On behalf of nearly 60,000 members of Common Ground Healthcare Cooperative, I write to provide comments on proposed changes to rules governing Association Health Plans (AHPs) from the perspective of my current position as a health insurer CEO and as someone who has previously worked with two association-type health benefit purchasing arrangements.

Common Ground Healthcare Cooperative is a nonprofit, fully-licensed health insurer governed by individuals and small employers receiving health insurance coverage through our organization. Our mission is to put members first in all decisions we make or can influence, and to ensure Wisconsin consumers continue to have access to health insurance. The recommendations within are provided in the spirit of that mission – to protect the interests of our members and other consumers in the state of Wisconsin.

I also understand the desire of the President's administration and members of Congress to make more affordable options available to employers especially self-employed consumers who are required to purchase insurance in the individual market. Prior to joining the effort to create Common Ground Healthcare Cooperative I helped to establish the Farmers Health Cooperative of Wisconsin – a health insurance purchasing cooperative for farmers. Prior to that, I worked with a chamber-sponsored association health plan that was available in seventeen counties in Wisconsin. I have been involved in efforts to try and find new ways to offer affordable options to consumers throughout my career, and the comments herein are meant to help the administration make AHPs succeed while protecting the interests of consumers.

AHPs Impact on the Health Insurance Markets

My primary concern about AHPs as envisioned under the proposed rule is that they will have a detrimental impact on the existing fully-insured individual and small group health insurance markets for the simple reason that they will play by different rules than those required of licensed insurers. This will lead to healthier individuals participating in AHPs while sicker individuals remain in the non-association health insurance market. It appears AHPs will be allowed more flexibility in the following key areas:

- **Market Regulations:** Under the proposed rules, AHPs do not have to offer insurance to individuals and groups that do not meet participation requirements (those outside of profession or geography), therefore AHPs are likely to “game the system” by structuring rules to attract the healthiest groups and may do so by targeting industries that have more favorable risk profiles. Further, AHPs are not currently required to participate in the Risk Adjustment program which will pull those relatively healthier individuals out of the calculation to the detriment of those participating in risk adjustment;
- **Rating rules:** Under the proposed rules, AHPs will be able to rate for age using a ratio that is broader than 3:1. This gives them the ability to structure pricing to be more attractive than the existing insured market to younger individuals and less attractive than the existing insured market to older individuals. Further, AHPs appear to be able to rate differently for gender which will enable them to rate women of child-bearing age higher than men of the same age;
- **Benefit rules:** If AHPs are not required to offer essential health benefits (EHBs), this will enable AHPs to attract healthier individuals by offering leaner coverage which is a common lever used by insurers to offer less expensive health insurance.

What this means is that ACA compliant coverage is not likely to remain affordable if the healthier individuals leave the market for less-regulated options. The AHPs will only be viable for the healthiest of risk profiles which driving up the costs for the remainder of the market. A recent study by Avalere projects increases in both the existing individual and small group markets as a result of AHPs, while the study does not address increases in costs as a result of consumers leaving for other options such as short-term policies also promoted by the administration.

AHPs Impact on Consumers

In the above section, we discussed the possibility that AHPs will offer lean benefit plans to attract the healthiest individuals. Unfortunately, lean coverage does not translate into needed coverage even for the healthiest individual when he or she becomes sick. For example, a plan that does not cover expensive specialty medications may appear to be a great idea for a healthy 30-year-old. But, if that individual acquires a disease that requires specialty medicine treatment, he or she will not have needed coverage. Since these medicines can cost hundreds of thousands of dollars, the individual is likely to be financially ruined due to lack of coverage. That is, unless

he or she is lucky enough to have been diagnosed during the health insurance open enrollment period, when the individual is able to purchase single risk pool coverage.

I also have concerns for consumers outside of my comments related to the insurance market. History shows the odds are highly stacked against the stability and long-term viability of AHPs even when good decisions are made in the best interests of members. There is typically no compelling reason for the members of the AHP to stay together as a group which is why AHPs cannot be compared to large employers like IBM. Consumers will only purchase from an AHP if the price is attractive and if they include the coverage they need.

It should also be noted that large employers (in Wisconsin, those with more than 50 employees) are currently subject to medical underwriting. If the AHP is not allowed to individually medically underwrite large employer groups, those employers that cannot pass traditional medical underwriting will be more attracted to AHPs which could lead to the poor financial performance of the AHP and its eventual demise if premiums escalate. For consumers, this can be devastating. Unpaid claims can again lead to financial ruin for members that incurred claims that were supposed to be covered but are not.

Our Position

We oppose Association Health Plans as proposed because of the market fragmentation that will result. If the AHP is offered to sole proprietors and small employer groups, the AHP will likely offer less expensive coverage by 1) targeting professions or industry groups with more favorable risk profiles, 2) not covering costly medical benefits such as cancer treatment and specialty drugs and, 3) increasing age rating ratios to price products more competitively for younger and subsequently healthier sole proprietors and small employers.

As stated previously, we recognize the need to find ways to offer more affordable coverage and therefore we provide the following suggestions for changes to the proposed rule:

AHPs and health insurers serving the same markets should play by similar rules. If flexibility is offered to AHPs, they should be offered to single risk pool health insurers as well, to reduce impact on the market. The existing health insurance market will be the place that groups turn to when other coverage alternatives are not viable due to the existing health conditions, and where groups will turn when they become sick. Efforts that undermine these pools increase costs for these businesses and individuals. It behooves all of us to work to protect this market.

The requirement that AHPs work with actuaries to set rates is insufficient to guarantee appropriate rate-setting or underwriting protections. To improve the likelihood that AHPs are actuarially sound, there should be some level of state review to ensure consumers are adequately protected – this is the best method to ensure proper maintenance of reserves and solvency standards since states are the experts in this area.

We are also concerned that the fiduciary requirements imposed by ERISA are not sufficient in a multi-employer environment that relies on administrators to provide insurance expertise. States

should be required to adopt laws that establish the level of reserves required of AHPs. Further, AHPs should be required to participate in guaranty funds to cover payments of claims should they become insolvent.

The adequacy of rate-setting is the primary factor that would indicate an AHP's chance for success. If the AHP cannot screen members for their health conditions upfront, it will be extremely difficult for them to set initial rates accurately. Therefore, they will likely select their risk in other ways which will include targeting healthier populations and excluding benefits that are known to be expensive such as treatment for cancer or specialty prescription drugs. AHPs should be required to cover similar benefits as the existing market in order to prevent the fragmentation that will occur in the marketplace if the AHP benefits vary significantly.

There should be also be significant transparency that is required of AHPs beyond what is laid out in the current proposed rule, including how rates are set, capitalization requirements, details on how benefits are paid and how every dollar is spent by the AHP (including administration fees and the like). This "economic participation" and feeling of ownership will promote the affinity of AHP members to one another.

Conclusion

As has been said many times in relation to this proposed rule, AHPs are not a new idea. They have been around for a long time and most have failed for reasons not addressed in this rule. We offer these comments to encourage the administration to protect insurance consumers both inside and outside AHPs.

We appreciate the opportunity to provide comments. If you have any questions or would like to discuss these suggestions further, please do not hesitate to contact us.

Sincerely,
Cathy Mahaffey
CEO
Common Ground Healthcare Cooperative