

March 5, 2018

Office of Regulations and Interpretations
Employee Benefits Security Administration, Room N-5655
United States 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

The Florida Chiropractic Association (FCA) appreciates the opportunity to submit comments regarding the Department of Labor's (Department) proposed rule, Definition of Employer Under Section 3(5) of ERISA-Association Health Plans RIN 1210-AB85.¹ The FCA membership of 4,800 represents 75% of Florida's chiropractic physicians and students seeking their Doctor of Chiropractic (DC) degree in Florida.

Under the federal Employee Retirement Income Security Act (ERISA), association health plans (AHPs) are classified as Multiple Employer Welfare Arrangements (MEWAs), and they are generally subject to state insurance regulation. Specifically, non-fully insured AHPs are currently subject to any state insurance law so long as that state law is not inconsistent with ERISA. Therefore, non-fully insured AHPs should be subject to state benefit mandates under current federal law. This would include state insurance equality laws – those, for example, that prohibit insurers from excluding coverage for services provided by a chiropractic physician if those services are within the chiropractor's scope of practice and also covered if performed by another licensed physician. Patients nationwide benefit from these important consumer protection laws by being able to choose (using this example) chiropractic services instead of more costly and higher-risk pharmacological treatments.

Florida Chiropractic Association is deeply troubled that, by exempting non-fully insured AHPs from state consumer protection insurance laws, such as insurance equality or any willing provider laws, chiropractors and their patients would have no protection from coverage discrimination by these plans. Although the Affordable Care Act contained a provision under

¹Definition of Employer Under Section 3(5) of ERISA-Association Health Plans
<https://www.regulations.gov/document?D=EBSA-2018-0001-0001>

Public Health Service Act, section 2706, that prohibits group health plans, including non-fully insured AHPs, from discriminating with respect to participation under the plan or coverage against any health care provider who is acting within the scope of that provider's license, enforcement of that law has been weak at both the state and federal level.

The FCA supports the role of state insurance commissioners as the first line of defense against insurance abuses. However, the American Academy of Actuaries² has outlined that the viability of many state markets would be challenged because AHPs, under the proposal, could operate under separate rules than those competing plans that must follow existing state regulations. For this reason, the National Association of Insurance Commissioners (NAIC), along with numerous business and other interest groups, have opposed proposals to expand the use of AHPs, particularly proposals that would exempt AHPs from state regulation.³ It is worth noting that during previous congressional debate on this issue, more than 1,000 state government, business, labor, consumer and provider groups opposed the expansion of AHPs nationwide.⁴

The Florida Chiropractic Association is also concerned that this new scheme would not require insurers to comply with many patient protections called for under the Affordable Care Act, such as essential health benefits (EHBs). Under the proposed regulation, a bare-bones plan could be designed that could siphon off healthier patients and ultimately lead to higher premiums for consumers and employers who buy plans in the traditional insured markets. In an earlier proposed rule, the American Chiropractic Association expressed apprehension that undermining the current EHB structure would create a patchwork of standards across the country and that there must be continued federal interaction on this vital component of the Affordable Care Act.⁵ Anything less may result in the unintended consequence of patients losing important health benefits.

Yet another troubling provision in the proposed rule, is one that would exempt insurers who market these new AHPs from spending at least 80 percent of premium revenue on actual medical care. The current 80/20 rule, or Medical Loss Ratio, called for under the Affordable Care Act,⁶ has bipartisan support and ensures patients that at least 80 percent of their premiums are going for actual healthcare costs and not in the pockets of corporate executives. Eliminating this rule could result in higher premiums, and insurers would be free to spend unchecked on extraneous overhead items.

² American Academy of Actuaries, Issue Brief, Association Health Plans, February 2017
<http://www.actuary.org/content/association-health-plans-0>

³ National Association of Insurance Commissioners, Letter to Congress
http://www.naic.org/documents/government_relations_170712_ltr_small_business_health_plan_prov_bcra.pdf

⁴ Congressional Record May 13, 2004, p. H2961 <https://www.congress.gov/crec/2004/05/13/CREC-2004-05-13-pt1-PgH2951.pdf>

⁵ Comments of the American Chiropractic Association, re:CMS-9930-P, Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2019
<https://www.acatoday.org/LinkClick.aspx?fileticket=DOMXReD-Awg=&portalid=60>

⁶ Rate Review & the 80/20 Rule <https://www.healthcare.gov/health-care-law-protections/rate-review/>

In sum, interstate sales, the core of association health plans called for under this proposal, will start a 'race to the bottom' by allowing insurers to choose their regulator. This is not sound policy for the consumer or the provider. We would urge the Department to scrap this proposal and instead offer a viable solution that maintains the states' regulatory and oversight authority vital to protecting patients and insurance markets. While the aim of providing more coverage to more people is indeed laudable, the pure notion that state protections – many of which patients have spent decades achieving and which would be suddenly wiped out by this proposed rule – is simply unacceptable.

On behalf of our chiropractic physician members, who are largely small business owners or employees of small businesses, we commend the administration for seeking ways to help small employers potentially have access to the excellent plans and more affordable premium levels enjoyed by large employers and their employees and families. This association would like to offer an AHP to its members, as would many state associations, but, would not want plans it could offer to be of lower quality or provide less or different benefits than Florida laws minimally require and Floridians have come to expect.

We appreciate this opportunity to provide comments on the proposed rule. We believe that taking another look at this issue – while keeping in place state oversight of all plans marketed within each state – will ensure patients receive high-quality care that is responsive to their needs and preferences, at a cost both they and the government can afford. If you have any questions regarding our comments or need more information, please contact me. Thank you for your fair consideration.

Respectfully,



Debra M. Brown
Chief Executive Officer

Cc: FCA Board of Directors
Paul Lambert, FCA General Counsel
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