



Oregon and Utah



Idaho and select counties of Washington

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March 6, 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 NW  
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:

On behalf of Regence health plans, thank you for the opportunity to comment on the proposed changes to the definition of "Employer" under Section 3(5) of ERISA-Association Health Plans. Regence is a part of a family of companies committed to developing personalized health experiences for people and improving the health care system, but we are best known for creating employer-based health insurance 100 years ago. Today, we provide these services to more than 2 million members in Oregon, Washington, Idaho and Utah through our regional health plans.

The Executive Order issued by President Trump on October 12, 2017, expressed the desire to allow small businesses to band together more easily to form associations, with the hope that such expanded purchasing power would help reduce risk and cost, improving small businesses' competitive position relative to large groups. To achieve these objectives, Regence urges the Department of Labor to incorporate the recommendations outlined on the following page into the final rule. These recommendations would help facilitate effective competition between all carriers, minimize adverse selection, and reduce the risk of market division. Regence also joins and supports the comment letters prepared by America's Health Insurance Plans and the BlueCross BlueShield Association.

Implementing the proposed rule as currently drafted will increase the division between the current small group market and the expanded Association Health Plan (AHP) market. The potential gap between these two market segments is concerning due to the fact that while some small groups will benefit, other small groups will be significantly harmed. A careful tailoring of the regulations could limit the division that leads to balanced participation in AHPs that would not unduly harm other groups. Left unchecked, the extreme division between the sick and healthy groups ultimately would cause more harm than good.

## RECOMMENDATIONS

### 1. Grandfather Existing Association Health Plans

We join AHIP and BCBSA's recommendations that the final rule should grandfather existing AHPs. Due to our unique experience with AHPs in Washington State, we urge you to permanently grandfather these existing AHPs rather than forcing them to adopt new rules. Existing AHPs perform a valuable service, and applying new rules to these AHPs disrupt that service. Additionally, we recommend grandfathering at the association, rather than plan level, to allow AHPs the flexibility to modify benefits to changing needs without worrying about losing grandfathering status. Importantly, this structure offers the most possible options for existing AHPs while meeting the Executive Order's requirement of expanding new AHPs without harming the existing market.

### 2. Prohibit Health Status Rating

Consistent with the concerns raised by BCBSA and AHIP, we recommend that the final rule more clearly express and disallow health status or experience rating in AHPs. The rule should clarify that the experience of a member employer group may not be considered when setting rates. Allowing AHPs to rate based on a participating employer group's health status or loss ratio could allow AHPs to cherry pick groups with the least amount of risk. While the healthier groups in these AHPs would benefit from lower premiums, those remaining in the current small group market would experience higher premiums. As a result of higher premiums, others would be priced out of the market completely. The entire small group market could be destabilized through higher overall average premiums and reduced enrollment.

### 3. Preserve State Benefit Mandates and Cede Regulatory Oversight to States

It is paramount that carriers must satisfy the benefit mandates in each state they sell plans. It is important to prevent a so-called "race to the bottom" where associations offer leaner, less robust plans that will render enrollees surprised that they do not have certain benefits. Preserving a state's ability to regulate insurance within their state by enforcing their legislature's-approved mandates will ensure free competition while protecting small groups in each state.

We recommend ceding regulatory oversight to the states to provide the best consumer protection possible. AHPs have a rocky history with insolvencies and fraudulent activities that have hurt consumers and disrupted markets. State regulatory bodies are in the best position to monitor the activity of carriers and associations, and remedy consumer complaints. This is particularly true where AHPs may be allowed to sell across state lines. Each state should be allowed to have regulatory oversight over an AHP, regardless of its situs.

### 4. Allow Carriers to Establish Association Health Plans

Carriers can leverage their existing knowledge to reduce the risks of insolvency and fraud as well as improve the affordability of coverage for AHPs. Carriers understand the insurance risks and know how to properly design and price benefits. Even more importantly, carriers can run AHPs efficiently; eliminating layers (e.g. third-party administrators) and reducing fees will allow for more affordable coverage.

Regence is dedicated to finding solutions for the unique needs of all consumers, while promoting a stable marketplace. Our team of actuarial experts stand ready to discuss the above recommendations. Should you have any questions, please do not hesitate to contact us.

Sincerely,



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