

March 6, 2018

Submitted Electronically Via Federal Rulemaking Portal: www.regulations.gov

Attention: Definition of Employer – Small Business Health Plans
RIN 1210-AB85
Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
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

The Louisiana Association of Business and Industry (LABI) and their consultant, Associated Benefits Consulting (ABC) appreciate the opportunity to comment on the Department of Labor notice of proposed rulemaking titled “Definition of ‘Employer’ Under Section 3(5) of ERISA—Association Health Plans,” RIN 1210-AB85, 83 *Fed. Reg.* 614 (January 5, 2018). While LABI has several comments to express, **LABI supports the Department’s proposed rule on Association Health Plans (AHPs).**

The Louisiana Association of Business and Industry (LABI) was founded in 1974 and serves as the Louisiana State Chamber of Commerce and the Louisiana Manufacturing Association. LABI has over 2,000 business members who employ 320,000 workers with small business representing 70% of the membership.

Over 30 years ago, LABI saw the need to offer their members a group comprehensive major medical plan that was not available in the market at that time. Since its inception, the LABI health offering has been with only 2 different carriers—Travelers Insurance and Blue Cross Blue Shield of Louisiana (BCBSLA). In 1994, Travelers Insurance decided to no longer underwrite group health insurance in Louisiana. LABI and ABC went to BCBSLA and created the LABI Blue Chip Health plan, a comprehensive major medical group health offering. At the time, BCBSLA offered only limited group health coverage - a hospital surgical plan with a supplemental major medical plan offering far less coverage, double the burden of filing claims and indemnity coverage for surgeries/hospital stays.

Through its 24-year course, the LABI Blue Chip plan has evolved. At one time, the insurance contract for LABI members was filed separately with the Dept. of Insurance in LA and had numerous exclusive contractual plan differentials such as:

- no maximum on durable medical equipment
- 2 wellness exams a year, no organ transplant maximums
- \$2-million-dollar lifetime maximum
- higher Accidental Injury Endorsement
- dependent maternity coverage
- coverage of TB tests
- 100% coverage of skilled nursing, hospice and home health after the deductible was met
- preferred rating for 3+ employees with medical conditions
- higher commissions for brokers

The trusted LABI Blue Chip Health plan, at the highest point, assisted over 1,800 businesses providing health coverage to over 45,000 individuals. Through the course of time, the LABI Blue Chip Health plan experienced some loss of exclusive membership features (plan differentials), due to market place changes, as well as changes made by the carrier. However, with the passage of the Affordable Care Act (ACA), the benefits of association exceptions were essentially outlawed under the community rating rules, mandates and standards set forth in the new act, eliminating all remaining features exclusive to the LABI Blue Chip Health plan. Choices were limited, rates were set, and group size determined the mandated benefits. Our membership was directly affected by these changes and we have seen a significant reduction in the number of employer groups who participate in our plan.

Despite the removal of customization and flexibility, LABI continues to offer a plan to our members. Louisiana allowed the grandfathering of plans in effect prior to March 23, 2010. Today, half of the employer groups in the LABI Blue Chip Health plan have maintained grandfathered status. This high grandfathered number demonstrates the mindset of many employers who prefer offerings specifically designed to their needs and those of their employees.

LABI would like to make the following specific comments on the proposed rule:

Definition of Bona Fide Association. It is our belief that many credible associations already exist that meet the sub-regulatory guidance on ERISA section 3(5). LABI has been in existence for 43 years and has had a reputable form of an AHP since 1983 and adheres to a governing body and by-laws, as do other long-standing associations. The primary mission of the organization is paramount and further demonstrates “acting in the interest of” employers. Newly formed associations may lack cohesiveness, insurance knowledge, sufficient bylaws and governing bodies. A new organization with insurance as the primary mission could be more at risk for mismanagement, leaving employers and individuals without insurance, like the Multiple Employer Welfare Arrangements (MEWAs) that are now defunct. For these reasons, LABI suggests a standard definition for an association be determined, whether that means qualifying factors such as years in existence, financial reserves and/or insurance expertise.

Working Owners. All size employers can benefit from AHPs as described in this proposed rule. As seen in the LABI Blue Chip plan, both small and large employers benefit from creative plans that meet their employees’ needs. LABI’s membership includes many sole proprietors, or working owners, who are looking for affordable coverage, but are currently not considered eligible for the group market. The view of working owners set forth in the proposed rule is extremely beneficial and important to such employers/employees. These workers are perhaps the group with the most need for choices.

Therefore, LABI supports the proposed requirement of an owner/employee to submit written representation to the sponsoring organization as being reasonable.

The one area of concern is the requirement in the proposed rule precluding eligibility of an owner/employee if she or he is eligible for “other subsidized group health plan coverage ... of the individual or by a spouse’s employer.” While the proposed rule opens AHPs to this category of working owners, the subsidized coverage eligibility requirement negates the value of this potential offering.

To demonstrate how working owners can be penalized if the spouse’s employer subsidizes coverage disqualifying them from participating in an AHP, consider the following example: Jim (a working owner) seeks to cover himself and his two children and has only the individual market to purchase coverage. In 2017, his individual market premium went from \$1,600 a month to \$2,700 a month in 2018. Currently, Jim is not eligible for a group health plan.

To expand on this example, assume Jim is married to Suzy, who has health insurance coverage through work, in which her employer subsidizes ANY portion of Jim’s coverage. According to the proposed rule as currently written, Jim would not be eligible for coverage through an AHP. Even though Jim has access to subsidized coverage through Suzy’s employment, if the cost is prohibitive and the specific coverage does not meet his needs, his choices are limited to his wife’s plan or the individual market. This appears to contradict the expressed goals of this proposed rule to increase choices and affordability of group health coverage.

If this requirement remains in the final rule, the term “subsidized” should be further defined to mean an employer’s payment of a “significant” percentage of the premium.

Health Nondiscrimination Rules. The HIPAA/ACA health nondiscrimination rules for membership and access to an AHP are necessary and should be easy to follow/implement. The area requiring further review, discussion and concern is the prohibition of non-discrimination *within* groups of similarly situated individuals, and the applicability of discrimination *across* different groups of similarly situated groups. In looking at the rules of classifications that may be bona fide, “different geographic location” is one to address. An association that meets all necessary requirements, may see fluctuations in costs based on geographic locations within one state or area of the country. It seems these premium fluctuations should be allowed if done so for all offerings and employers in that geographic area. Using example 6, on page 636 of the proposed rule, if the premium for any members in City O were set before this one member was rated, that should be allowable.

This example is consistent with principles of insurance which are necessary to create and maintain a successful, long term association health plan, like the LABI Blue Chip Health plan. Rating based on risk must be allowed in some form or fashion. The many defunct co-ops are examples of what happens when the principles of insurance are ignored. These principles are seen in all types of insurance (i.e. adolescent males pay higher auto insurance rates and why life insurance is less expensive for a 35-year-old than a 65-year-old).

The ability to pool all size employers under one long-standing, reputable, well organized association, creates a sustainable pool to absorb multiple types of health risks. The removal of mandated coverages and the ACA’s health insurance premium rating rules, which today only apply to individual and small

group markets, allow for all size groups to benefit from plan creativity, customization, wellness incentives and premium reductions.

To further demonstrate how the removal of mandated coverages can benefit individuals participating in an AHP, consider, a 61-year-old female who is relegated to the individual market where she must purchase coverage that includes maternity. This proposed rule could potentially allow maternity to once again be a choice rather than a mandate.

AHPs can customize plans based upon the needs of their members. An association with members of a certain profession may elect to increase benefits that are widely utilized (i.e. knee replacement surgery for tile workers).

LABI believes this proposed rule can achieve the primary goal of expanding access to affordable and meaningful health coverage by allowing more employers to participate in AHPs. We appreciate the Department of Labor's diligence in considering the importance of reputable, long standing associations as a preferred vehicle for AHPs.

If you have any further questions regarding our comments or the LABI Blue Chip Health plan, please feel free to contact our consultant, Mrs. Susan Ellender at susane@abenefitsconsulting.com or (225) 928-2225.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Waguespack", with a long horizontal flourish extending to the right.

Stephen Waguespack
President