



March 6, 2018

Submitted via: www.regulations.gov

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; 83 Fed. Reg. 614 (Jan. 5, 2018)

Dear Sir or Madam:

Please accept these comments in support of the notice of proposed rulemaking ("NPRM") set forth at 83 Fed. Reg. 614 (Jan. 5, 2018), entitled *Definition of "Employer" Under Section 3(5) of ERISA – Association Health Plans* published by the Department of Labor ("Department").

By way of background, USHEALTH Group, Inc. ("Company") is an insurance holding company headquartered in Fort Worth, Texas, which owns and operates three (3) life, health and accident insurance companies, Freedom Life Insurance Company of America, National Foundation Life Insurance Company and Enterprise Life Insurance Company (together, the "Insurance Companies"). The Insurance Companies offer a diverse portfolio of health insurance coverage in the individual market.

The Company supports the Department's proposed regulations because such proposals will (i) provide consumers with more choice in an underserved and overpriced market, thereby increasing competition in the marketplace, and (ii) make coverage accessible to individuals who may not otherwise have access to coverage that they want or that meets their needs due to gaps created by the Patient Protection and Affordable Care Act ("ACA").

In particular, the Company supports the Department's proposal to expand the definition of an "Employer" under ERISA and to allow employers to band together to form an association health plan ("AHP") for the specific purpose of providing health coverage to their employees. These proposals will provide access to health coverage to small business owners and employees and sole proprietors who may be unable to afford coverage through the Exchanges or the Small Business Health Options Program ("SHOP"), both created by the ACA.

While the Company supports the proposed regulations, there are several issues and questions raised with regard to AHPs that are not addressed in the NPRM as currently drafted, and the Company has several recommendations that are meant to ensure that the goals of the proposed regulation are met.

In this regard, the NPRM should be amended or clarified by (i) expanding the commonality-of-interest requirements, (ii) limiting enrollment to an annual open enrollment period, and (iii)

making it clear that state health insurance laws and regulations are preempted with regard to AHPs.

Expand Commonality-of-Interest Requirements

The commonality-of-interest requirements in the NPRM, as currently drafted, require that employers that band together in order to offer health insurance coverage to their employees must (i) be in the same trade, industry, line of business or profession, or (ii) have a principal place of business within a region that does not exceed the boundaries of the same state or the same metropolitan area. However, AHPs would be less difficult to form if the commonality-of-interest requirements were expanded to include small employers, as defined by reference to a particular number of employees, and sole proprietors, so that an AHP consisting of small employers or an AHP consisting of sole proprietors could be formed in order to provide small business employees and sole proprietors health coverage.

If small business owners and sole proprietors were allowed to band together for the purpose of obtaining health coverage without regard for their particular industry or trade and without regard for where their principal place of business was located, this would aid in filling the gap left by the ACA by expanding coverage and increasing competition in the healthcare industry. Therefore, the Company requests that the Department consider expanding the current list of commonalities to include small employers and/or sole proprietors.

Limit Enrollment in AHPs to an Annual Open Enrollment Period

It is unclear if AHPs would be required to accept new employer members year round or if there would be an annual open enrollment period during which employers would be allowed to join the association and enroll their current employees in the health coverage issued to the association. If AHPs are required to accept new employers year round, rather than limiting enrollment to an annual open enrollment period, this could increase the cost of coverage.

Because the plans contemplated by the proposed regulations are not individually underwritten and do not allow for group underwriting at the formation of the AHP, the cost of these plans may already be high. This will be exacerbated further if AHPs are not allowed to restrict enrollment and not accept new employer members throughout the year. The pricing for these plans will take into account the fact that they are guaranteed issue and may lose their competitive edge as compared to those plans available on the Exchange or through the SHOP. However, if carriers issuing the plans to AHPs are not allowed to manage their financial risk by limiting employer enrollment in the AHP during the year, prices will be even higher.

The Company urges the Department to limit enrollment in AHPs to an annual open enrollment period in order to help manage the significant risk that is already being undertaken due to the guaranteed issue requirements and to drive prices down so that coverage available through AHPs is competitive, especially when compared to coverage available through the Exchanges and the SHOP established under the ACA.

Clearly State the Preemption of State Laws and Regulations

The NPRM, as currently drafted, is not clear that state health insurance laws and regulations are preempted. The Company urges the Department to revise the regulations to make this clear.

March 6, 2018

Page 3 of 3

If this is not made clear, health insurance laws and regulations from each state may be applicable and may require that multiple AHPs be established in order to provide coverage to employers belonging to the same trade, industry, line of business, or profession or to employers who are in the same metropolitan area, but which metropolitan area includes more than one state.

For example, if an AHP formed by small CPA firms was established in one state and wanted to expand to cover small CPA firms in another state, the AHP, depending on the insurance laws and regulations of both states, may not be able to simply expand, but must instead form a second AHP that separately meets the requirements proposed in the NPRM in order to provide coverage in a second state. The AHP would be required to go to the time, trouble and expense of establishing a second AHP and would have to adapt the model that it had in one state to comply with the different laws of the second state. This would both discourage AHPs from expanding to include more employers and from forming multiple AHPs, thereby decreasing health coverage options in some states and competition in the industry.

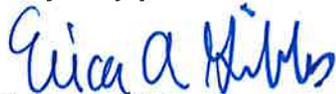
Without this clarification, the establishment and administration of AHPs would be prohibitively complicated and expensive and would impede the viability of AHPs as an alternative option for coverage in the marketplace. Therefore, the Company urges the Department to make this clarification in the final regulations.

Conclusion

The NPRM has the potential to make a positive impact on the market that will drive cost down and increase competition in the industry and the Company urges the Department to make the above requested clarifications and changes and to move forward with a final rule addressing AHPs.

We appreciate the opportunity to comment on the NPRM and should you have any questions or require additional assistance, please do not hesitate to contact me.

Very truly yours,



Erica A. Gibbs

Attorney, Legal Department