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March 6, 2018

U.S. Department of Labor
29 CFR Part 2510
RIN 1210-AB85

Comments to Association Healthcare Plans

The Plumbing-Heating-Cooling Contractors - National Association (PHCC) wishes to thank the U.S. Department of Labor for considering changes to the rules governing Association Health Plans (AHP's). PHCC has represented plumbing and HVAC professionals for over 130 years and supports efforts to improve their businesses and the health of their employees. PHCC submits the following comments on changes to 29 CFR Part 2510, RIN 1210-AB85:

The Department seeks to modify the application of commonality of interest which PHCC would support. PHCC does ask for clarification of the application of "trades" and "industry" in that PHCC represents members in the plumbing trade and the HVAC trade either with member businesses that would do either trade exclusively or members whose businesses combine those trades. Other trade associations may have similar make-up of multiple trades, it would be burdensome for these types of associations to form multiple AHP's to accommodate this. Both of the occupations however would be involved in the construction industry. Clarification of how these trades connect to an industry and how an industry would be viewed relative to the rule would be beneficial.

The Department invites comments specifically on whether more clarification would be helpful regarding the definition of a metropolitan area. PHCC has members in various geographic areas across the country including many metropolitan areas. Setting out a more finite definition of a metropolitan area would eliminate confusion and help to eliminate manipulation in the program. The suggested designations by the U.S. Census or the Office of Management and Budget (OMB) would be worthy of consideration. In regards to association members having a principal place of business in the metropolitan area, this consideration should apply to members that would participate in the AHP. Associations could have members, possibly associate members, who may or may not be sponsors of the association, with non-metropolitan offices. Prohibiting these affiliations could present an obstacle to the association's existence. Associations should be required to track participants and be subject to audit by DOL.

PHCC would support the criteria for a bona fide group or association of employers to be capable of establishing a group health plan under ERISA. Ensuring that the group or association have a formal organizational structure with a governing body and have by-laws or other similar indications of formality appropriate for the legal form in which the group or association operates, and that the group or association's member employers control its functions and activities,

including the establishment and maintenance of the group health plan, either directly or through the regular election of directors, officers, or other similar representatives, will help to validate that the group or association is not simply a broker for insurance.

It is important that only employees and former employees of employer members (and family/beneficiaries of those employees and former employees) be allowed to participate in a group health plan sponsored by the association and that the group or association does not make health coverage offered through the association available to anybody other than to employees and former employees of employer members and their families or other beneficiaries to promote the integrity of the program.

Additionally, providing that working owners, such as sole proprietors and other self-employed individuals, may elect to act as employers for purposes of participating in an employer group or association and also be treated as employees of their businesses for purposes of being covered by the group or association's health plan will promote participation by individuals currently relegated to individual coverage pools. Conditioning these solo operators with active participation requirements would also further the integrity of the program. These conditions were suggested to be: earning income from the trade or business for providing personal services to the trade or business; and either provides on average at least 30 hours of personal services to the trade or business per week or 120 hours of such service per month, or has earned income derived from such trade or business that at least equals the cost of coverage under the group or association's health plan. In addition, the individual must not be eligible for other subsidized group health plan coverage under a group health plan sponsored by any other employer of the individual or by a spouse's employer. A group or association providing an AHP should be able to rely upon the information provided by an employer. It would be burdensome for the association to investigate every employer or to receive, evaluate, and store confidential employer records for all participants. DOL would have opportunity to verify plan participants work activity through cooperation with the Internal Revenue Service or through an auditing process.

PHCC supports the Department's expectation that changes to the regulation could greatly increase association coverage options available to American workers. It is further expected that many programs will be developed to provide affordable coverage to small businesses that are either facing expensive benefit programs, low benefit programs or in some cases, no program at all.

The Department has expressed concern that discrimination could become a factor with AHP's. In order to maintain the nondiscrimination integrity of the program, AHP participants would need to be treated consistently. PHCC would support the idea that under the proposed regulation a group or association which seeks treatment as an "employer" under ERISA section 3(5) for purposes of sponsoring a single group health plan under ERISA section 3(1) cannot simultaneously undermine that status by treating different employers as different groups based on a health factor of an individual or individuals within an employer member. It is agreed that this structure could potentially represent an expansion of current regulations. Regarding the involuntary cross-subsidization across firms, the point of large groups pooling risk is to minimize this subsidy. If the pooling of risk reduces premiums for participants, AHP's will flourish, if

premiums are not reduced, AHP's will not succeed. The marketplace will ultimately decide the fate of AHP's.

AHP's offer a new opportunity for employers with common interests, plumbers and HVAC workers in the case of PHCC, to gather into large groups. These may be nationwide groups with thousands of employees, many of which operated in the individual or small group market. The strength of numbers gives more leverage for policy negotiations and dilution of the participant pool. The opportunity for small business to improve their bottom line and provide healthcare benefits to employees cannot be understated. PHCC supports making changes to the rule to make AHP's an attractive alternative to providing healthcare benefits.

Respectfully submitted,

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