



March 6, 2018

The Honorable R. Alexander Acosta  
Secretary of Labor  
U.S. Department of Labor Employee Benefits Security Administration  
200 Constitution Avenue NW, Room N-5655  
Washington, DC 20210  
Re: Definition of Employer—Small Business Health Plans RIN 1210-AB85

Dear Secretary Acosta:

HMS welcomes the opportunity to comment on the Department of Labor notice of proposed rulemaking entitled, “Definition of Employer Under Section 3(5) of ERISA-Association Health Plans”, RIN 1210-AB85.

HMS advances the healthcare system by helping payers reduce costs, improve health outcomes, and deliver exceptional customer experiences through our industry leading analytic and engagement solutions. Covering more than 100 million U.S. healthcare consumers with its services, HMS employs its coordination of benefits, payment integrity, and member engagement solutions to save billions of dollars annually for government and commercial healthcare programs, while improving the outcomes and engagement of health program members.

Given our vast experience in Medicaid coordination of benefits, we offer comments to ensure that Medicaid remains the payer of last resort as required by federal and state laws. If a Medicaid member has other insurance coverage, such as employer-sponsored coverage, Medicare, Tricare and/or casualty insurance, federal law requires that other insurance coverage to pay primary to the extent of its legal liability. Nationally, on average, over 10% of Medicaid members have other insurance coverage. Ensuring that Medicaid is the payer of last resort is known as Medicaid Third Party Liability (TPL) or Medicaid Coordination of Benefits (COB).

The benefits of Medicaid COB are numerous, and include protection of taxpayer dollars, savings for Medicaid agencies to expand care to a wider range of deserving members, avoidance of publicly-funded program crowd-out, and overall compliance with federal laws.

HMS urges the Department to ensure that all self and fully insured association health plans (AHPs) be captured in the existing definitions of “third parties” under §1902(a)(25)(A) of the Social Security Act (SSA) and “private insurer” under 42 CFR § 433.136 for purposes of ensuring that Medicaid retains its status as the payer of last resort.

Furthermore, HMS remains strongly supportive of the applicability of §1902(a)(25) and 42 CFR 433, Subpart D Medicaid Third Party Liability to all AHPs, including, but not limited to all data sharing and Medicaid claims processing responsibilities. Should self-insured AHPs be subject to regulation by the states, then we further request that these AHPs be made subject to state Medicaid TPL statutes and regulations just as they would apply to all other insurers and liable parties doing business or providing coverage to residents of that state.



We encourage the Department of Labor to ensure that non-discrimination policies also protect individuals who may be enrolled in or have access to Medicaid, Medicare and other government-sponsored healthcare programs. Access to, and/or enrollment in, government-sponsored healthcare programs should not be a factor for eligibility or ineligibility in any AHP. Furthermore, to ensure that AHPs fully comply with their TPL obligations to Medicaid programs, we also request that AHPs be bound to non-discriminatory Medicaid TPL claims processing standards, and be required to receive and process TPL claims in the same manner and through the same channels as all other similar claims.

Lastly, the Department requests comments on whether it should adopt notice requirements to ensure that members of associations are adequately informed. We ask the Department to also promote transparency through the timely and consistent, public release of information identifying AHPs, the jurisdictions they serve and the basis of commonality.

We appreciate your consideration of our comments on this important proposed rule and look forward to ongoing collaboration on these issues. If you have any questions concerning these comments, please contact me directly at [kballantine@hms.com](mailto:kballantine@hms.com) or (202) 448-2024.

Sincerely,  
Kristen Ballantine  
Vice President, Government Relations