

February 27, 2018

## PUBLIC COMMENT LETTER

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655

**U.S. DEPARTMENT OF LABOR**  
200 Constitution Avenue NW  
Washington, DC 20210

Attention: Definition of Employer – Small Business Health Plans RIN 1210-AB85

*Submitted Electronically:* [www.regulations.gov](http://www.regulations.gov)

Re: Proposed Rules; Definition of Employer under Section 3(5) of ERISA –  
Association Health Plans.

Dear Sir or Madam:

On behalf of our nearly 500 member hospitals and health systems, the Texas Hospital Association (“THA”), appreciates the opportunity to provide comments on the above-referenced proposed rules, published January 5, 2018. THA and its members are committed to increasing access to appropriate health insurance coverage for individuals and families. We appreciate your time and work in developing these rules.

THA believes health care coverage should be affordable and provide adequate minimum benefits, with prevention and primary care serving as the foundation of the health care system to keep individuals healthy and lower the overall cost of care. THA is concerned the proposed rules will permit an increase in the number of plans which could qualify as large group or self-funded employer plans.

As noted in the proposed rules, large group and all self-funded plans are not subject to the Affordable Care Act’s essential health benefit requirements, risk adjustment program, single risk pool requirements, prohibitions against certain variances in premiums, and Medical Loss Ratio provisions, among potentially other obligations. While large group and self-funded plans may be subject to some state regulation, increasing the number of plans subject to no or limited regulation by Texas’ Department of Insurance would lead to a patchwork of varying standards in offerings and regulations for providers and patients in Texas.

Moreover, introducing expanded options – potentially offering less comprehensive coverage – may weaken the individual and small group plan markets. Individual and small group plans will continue to be subject to additional regulation and may respond by increasing rates, taking on

increased risk, or exiting the market entirely. The loss of any plan reduces coverage options and is detrimental to the health and wellbeing of all individuals.

We thank you for your efforts in ensuring the proposed rules contain nondiscrimination provisions to protect individuals with health conditions that might otherwise lead to an inability to obtain health care coverage. However, the proposed rules do not offer enough protection against potential instability in the already fragile individual and small group markets. An increased number of large group or self-funded plans should not be the focus of these proposed rules when coverage options could be expanded through current offerings, with the added effect of simplifying oversight and regulation. THA respectfully asks that all possible effects of the proposed rules be thoroughly analyzed, with a focus on concerns stated herein.

Your attention to this is very much appreciated. We thank you for the opportunity to participate in the rulemaking process, for your time and attention to this matter, and look forward to working with you. Please feel free to contact me with any questions, comments, or if there is anything else THA can assist with.

Very Truly Yours,



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