



Public Disclosure Room
Employee Benefits Security Administration, Suite N-1513
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210.

RE: Definition of Employer—Small Business Health Plans; RIN 1210-AB85

BACKGROUND

Elevanta is an association management and professional services firm which provides a variety of products and services to our clients. For the last thirty years, Elevanta and its affiliates have provided services such as formation assistance, executive leadership, administrative support, financial management, convention services and advocacy to trade associations across the country. In 2003, the Elevanta Health program was created to provide access for employers and their employees to quality group health insurance at affordable rates. Elevanta's ACA-compliant health program features nine major medical PPO plans, two Minimum Essential Coverage (MEC) plans and three HDHP/HSA plans. Through these plans, Elevanta provides health coverage to thousands of employers and employees who would not likely be able to afford it otherwise.

OVERVIEW

In his October, 2017 executive order, President Trump directed the Department of Labor (DOL) to issue regulations allowing for more flexibility in the formation of Association Health Plans ("AHPs"). Specifically, DOL was asked to reevaluate its definition of "employer" under the Employee Retirement Income Security Act of 1974 (ERISA) in an effort to increase the formation of AHP's on the basis of common geography or industry.

On January 5th, 2018, the Employee Benefits Security Administration ("EBSA") division of DOL released its proposed rule, broadening its definition of "employer" for purposes of determining when employers can join together to offer or enroll in an AHP under ERISA. Specifically, the proposal "allow(s) employers to band together for the express purpose of offering health coverage" as long as they operate (1) within the same industry, trade or profession or (2) within the same state or specific metropolitan area (even if extends across state lines).

In its summary, EBSA stated that the purpose of the proposal was to "expand access to affordable health coverage, especially among small employers and self-employed individuals, by removing undue restrictions on the establishment and maintenance of association health plans under ERISA." Further, the proposed rule states that "the principal objective of the

proposed rule is to expand employer and employee access to more affordable, high-quality coverage.”

Unfortunately, while well-intentioned, EBSA’s proposal will prove detrimental to today’s current trade associations as well as their members, employees and those who are in need of health coverage. Elevanta asks that DOL reconsider its language, limit the definition of “employer” and preserve the integrity of AHPs.

COMMENTS

- (1) The Proposed Rule Threatens the Association Model: The trade association model, which has been in place since the 19th century,¹ focuses on the needs of members within specific industries. Existing, successful trade associations have long-established relationships with their members, are effectively controlled by their members, and serve to benefit their members on a daily basis.

Today’s trade associations offer benefits to their members, professions and to our society well beyond health insurance. Benefits of association membership typically include: leadership opportunities; subscriptions to e-communications, newsletters and magazines; access to industry-related webinars, conference calls and seminars; organization of regional, annual and issue-specific conferences; state, local and federal advocacy and access to members-only discounts and networking opportunities, among many others. Membership in associations also shows a business’ initiative, its engagement in a particular trade and its commitment to staying abreast of current developments in the industry. In fact, approximately 85 percent of all business failures occur in firms that are not members of their trade association.²

Under the draft regulations, a valid “association” health plan does not need any purpose other than to provide health benefits. There need not be ties to the community, industry or membership in order to be deemed a legitimate association. In fact, a compliant AHP is not required to interact with its “members” (other than in regards to coverage) at all. This greatly diminishes the value of the over 90,000 trade and professional associations currently active in the United States.ⁱ

Further, if language passes in its current form, the formation of countless new associations will cause current and potential association members great confusion in regards to the purpose and legitimacy of their association options. The resulting inevitable oversaturation of the market will drastically reduce the effectiveness of today’s trade associations, which, for decades, have provided the benefits and opportunities discussed above which are often otherwise unavailable to many in today’s workforce.

- (2) Relaxing Employment Standards Invites Inexperience and Fraud - The proposed rule significantly expands the current definition of “association” by permitting employers whose only connection may be industry or physical location to group together to form

¹ <https://www.npr.org/2011/05/25/136646070/time-for-associations-to-trade-in-their-past>

² <http://www.americanbusinessmag.com/2010/03/why-join-a-trade-association/>

an association. While the intent of the rule is "to cover genuine employment-based relationships, not to provide cover for the marketing of individual insurance masquerading as employment-based coverage," the language invites everyone from the inexperienced business owner to the ill-intentioned criminal to enter the market.

While the proposed rule itself acknowledges that some AHPs have "failed to pay promised health benefits to sick and injured workers while diverting, to the pockets of fraudsters, employer and employee contributions from their intended purpose of funding benefits," the expansion of the field to those not experienced or even fraudulent will inevitably result in a drastic increase in insolvency and unpaid health care claims. Further, by relaxing the "employer" requirement, the proposal makes it easier for AHP's—tied only by being in the same industry or geographic area—to "redline" their geographic definitions in order to exclude certain areas based on age, income and/or health status. This, as well as other efforts by bad actors to limit their risk pool, creates the potential for cherry-picking in order to lower costs while increasing the costs of state exchanges and legitimate competitors. As a result, those who are in a high-risk demographic will face skyrocketing premiums and be presented with limited options.

- (3) The Proposed Rule Will Challenge State Authority: If passed in its current form, the proposed rule will create great confusion in regards to federal versus state regulatory authority.

The applicability of state insurance laws depends on the type of plan as well as the laws of the particular state. With a new federal standard, however, the rules become unclear. While the federal rules may be relaxed, state insurance laws, including those that provide more expansive protections than the ACA currently afforded, will still be in effect. Further, with a new federal standard expanding current geographical limits, it is unclear how states will regulate plans which cover state lines.

CONCLUSION

Elevanta has been providing a wide range of association services, including offering a variety of health plans to thousands of employers, for over thirty years. We fear that, if finalized in its current form, these proposed regulations will threaten not only the legitimacy of thousands of trade associations but the health of those most in need of medical care. We ask that you reconsider expanding the definition of "employer" for the purposes of AHPs and preserve the integrity of the trade association model.

Thank you for your consideration.

ⁱ <https://www.thepowerofa.org/facts/>