



March 6, 2018

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

Re: Northwest Automotive Trades Association
Northwest Automotive Trades Association Health Plan

Washington Automotive Industry Association
Washington Automotive Industry Association Health Trust

Comments to Proposed Rule

To Whom It May Concern:

The Northwest Automotive Trades Association and the Washington Automotive Industry Association, jointly, and with their association sponsored health plans in Washington State and Oregon, respectfully submit these comments to the U.S. Department of Labor's Proposed Rule entitled "Definition of Employer Under Section 3(5) of ERISA-Association Health Plans." This letter provides the Northwest Automotive Trades Association and the Washington Automotive Industry Association statement of interest in the Proposed Rule. This letter also provides the Northwest Automotive Trades Association and the Washington Automotive Industry Association's substantive comments and recommended changes to the Proposed Rule.

I. Interest in the Proposed Regulations

A. Northwest Automotive Trades Association

The Northwest Automotive Trades Association ("NATA") was formed through many mergers dating back to 1921. The Northwest Automotive Trades Association supports the many facets of automotive industries in Oregon and Southwest Washington. NATA is an organization with a diverse membership, but one that shares one common desire: To improve not only automotive businesses, but the industry as a whole, all while meeting the needs of the motoring

public. NATA serves and represents every segment of the automotive industries and is committed to offering ways to improve and the industry and its members' businesses.

Over 30 years ago, NATA developed a health plan for members to give them affordable options for group coverage, originally working with Regence Blue Cross Blue Shield for health and dental plans. In 2006 NATA switched to Health Net of Oregon and Kaiser for health plan options and for more competitive pricing. A year later NATA had over 1,000 enrollees in its health plan. Within the next couple of years "groups" were formed that offered any business group health insurance and NATA's enrollment went on a downward spiral. Then in 2012 association health plans were targeted by the DOL for compliance issues, which forced many of these "groups" out of the group health insurance business. During this period NATA reviewed its organizational structure and membership to ensure that it was a bona fide association, working with a Portland attorney firm for assistance.

In 2016, NATA formed a new Trust through which to offer its association health plan. The Board of Trustees is comprised of six NATA volunteer members who oversee the NATA Health Plan and financials for the plan. NATA hired various service providers to support its Trust efforts, including a trust attorney, third party administrator, and consultant/general agent to help with this daunting task of managing its Trust and the association health plan. NATA's association health plan is strong and enrollment is growing.

NATA is significantly interested in the DOL's proposed rules, which directly impact NATA and the NATA Health Plan.

B. Washington Automotive Industry Association

The Washington State Automotive Wholesalers Association was founded in 1960 as a non-profit trade association of businesses in the automotive industry. In 1972 the Washington State Automotive Wholesalers Association changed its name to the Washington Automotive Wholesalers Association and then in 2012, the Washington Automotive Wholesalers Association changed its name to the Washington Automotive Industry Association ("WAIA").

WAIA was formed to engage in cooperative and coordinated endeavors and to provide an organization to represent the will of its members on industry and economic questions and regulatory and legislative (state and federal) matters. WAIA also provides an open forum on all questions of concern common to its members and is a permanent organization, capable of and prepared to act on behalf of its members.

The goal of WAIA has always been to provide support to the automotive industry in Washington that will enhance its productivity, image and role in the community it serves by joining together to deal with management, financial, regulatory and legislative (state & federal) matters. WAIA is governed by a Board of Directors with the power and authority to adopt and amend bylaws and other documents governing the Association.

Over the years, WAIA has provided many services to its members. Services that assisted businesses in carrying out their daily functions of running a business with the goal of providing a product or service that would save the business money or time in administering the business. Services and products like group purchasing of common business forms, credit card processing services, industry education events and lobbying efforts in the State.

At some point in the mid-1970s it was the desire of the membership that a medical benefit program be established that could provide members with coverage to provide to their employees. The initial program was established with Prudential Insurance Company and the program became very popular and successful. In 1979 the Association established the Washington Automotive Wholesalers Association Health and Welfare Trust to provide group benefits to members of the Association through a self-funded plan. The Plan was very successful and in 1990 was transitioned into a licensed insurance contractor.

Again, in about 1995, the WAIA sponsored health plans for members with various companies such as QualMed, Regence, Group Health, etc. These programs had various levels of success since there were several other “Association Plans” sponsored by non-bona fide groups. Our participants would come and go based on which “Association” offered the lower rates for the year.

In 2012, WAIA decided to sponsor an association health plan that would consist of Washington businesses in the automotive industry. In 2012, the Board of Directors of Washington Automotive Wholesalers Association voted to change the name of the Association to Washington Automotive Industry Association and to expand the categories of membership to be inclusive of most types businesses in the automotive industry. The Board also appointed the initial Trustees of the Washington Automotive Industry Association Health Trust. The program has been successful and has been very well supported.

II. Comments and Recommendations on the Proposed Rule

A. The Rules Should Encourage Innovation in Benefit Offerings and Underwriting.

NATA and WAIA applaud the Department of Labor’s acknowledgment that AHPs offer an important alternative for employers seeking health plan coverage. The AHP market provides many advantages to employers, which are otherwise unavailable in the community rated small group and the experience rated large group market. Some of the most important advantages are: 1) using economies of scale to negotiate better deals for participating employers; 2) providing unique and industry specific plan and product offerings; and 3) facilitating benefits administration for participating employers through online eligibility management, consolidated billing, COBRA administration, employer required communication/notices and access to ancillary benefits (vision, dental, life and accidental death and dismemberment).

The foregoing advantages are present in Washington and Oregon. The Washington Automotive Industry Association Healthcare Trust currently contracted with Premera to provide health care benefits to its members. The Northwest Automotive Trades Association Healthcare Plan is contract with Health Net of Oregon with a separate HMO option available through Kaiser. Both Trusts have contracted with Regence in the past

Both Washington and Oregon allowed AHP sponsored plans to use employer-specific claims experience as one of several factors in setting renewal pricing. Employer-specific underwriting is important to provide a meaningful alternative to the community rated small group market. AHPs need access to the flexibility of the large group benefit structure and underwriting requirements. The proposed nondiscrimination rule unfairly disadvantages fully-insured AHPs because it removes the most important tool for providing a meaningful difference in the underwriting available to other small employers. If the rule is adopted in its current form, we expect that insurance carriers will cease to be innovative and flexible in an effort to reduce the risk of negative claims experience.

RECOMMENDATION

The rule should eliminate the propose nondiscrimination provision and allow experience based underwriting at the employer level for insured plans. If the nondiscrimination provision is included in the final rule, existing AHPs underwriting methodology should be grandfathered.

B. The Rules Should Distinguish Between Self-Funded and Fully Insured AHPs.

We recognize, as noted by several other commenters, that the Rules do not distinguish between self-funded AHPs and fully insured AHPs. We think it is important to distinguish between these entities in the final rule.

Self-funded AHPs have historically presented the most significant problems in the market. Indeed in the Department of Labor’s M-1 regulations, the Department noted that the most significant issues with Multiple Employers Welfare Arrangements (“MEWAs”) is the risk that they will fail to pay claims. This risk is much more significant for self-funded AHPs than fully insured AHPs.

RECOMMENDATION

Except for the definition of employer and requested clarifications concerning preemption addressed below, all other provisions of the rule should be limited to self-funded AHPs.

C. The Rules Should Clarify that ERISA Preempts State Laws that Limit Fully Insured or Self-Funded AHPs From Operating.

ERISA Section 514 states that ERISA shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. As mentioned previously, state regulation of fully-insured AHPs is saved from preemption to the extent the state is establishing standards requiring the maintenance of specified levels of reserves and specified levels of contributions.

Although ERISA appears to provide some protection to AHPs by limiting a state's ability to directly regulate an AHP, insurance commissioners regulate AHPs indirectly by imposing stricter requirements on insurance plans offering coverage to AHPs than they would impose on those same insurance carriers offering coverage in the larger or small group markets. Indeed, there is no current guidance that restricts a state from prohibiting an AHP from self-funding, prohibiting an AHP from obtaining a license, imposing additional and often burdensome filing requirements to demonstrate satisfaction of federal law, or restricting underwriting which is otherwise available in the large group market.

RECOMMENDATION

The Rules should clarify that ERISA preempts state laws which impose requirements on insurance carriers offering coverage to AHPs which are more restrictive than the requirements which would apply if the insurance carrier is offering coverage to other employers purchasing insurance coverage in the market. Additionally, to the extent legally permissible, the Rules should clarify that state law which prohibit AHPs from sponsoring a health plan or from self-funding are preempted.

D. Allow Working Owners to Participate in AHPs.

There are many WAIA and NATA members who do not currently qualify to be included in the AHPs because the employer is self-employed. These are some of the hardest working mechanics in the industry. These working owners often struggle to find affordable healthcare coverage in a very limited individual health insurance market. Under the proposed Rule, working owners and their families are considered both an employer and an employee for purpose of enrollment in a group health AHP. The WAIA and NATA appreciate the DOL's efforts to open AHPs to these working owners.

RECOMMENDATION

The proposed Rule should retain the proposed expansion of AHP availability to self-employed family working owners.

E. Most Importantly, the Rules Should Protect What Is Already Working.

Northwest Automotive Trades Association and the Washington Automotive Industry Association are concerned that the proposed regulations may open the AHP market to health insurers and human resource service companies masquerading as associations for the purpose of selling health insurance. In this regard the Northwest Automotive Trades Association and the Washington Automotive Industry Association believe that it is important that AHPs be limited to membership-based organization, which are tax exempt under Internal Revenue Code Section 501(c), and which are formed at least in part for a purpose other than providing health benefits to its members. These requirements would recognize the importance of the AHP and its relationship to its members.

RECOMMENDATION

We recommend that the DOL bona fide test should be modified, not abandoned – AHPs should not be limited to an industry; however, AHPs should be to limited to membership-based organizations, which are tax exempt under Internal Revenue Code Section 501(c), and which are not formed solely for the purpose of providing health benefits.

III. Summary of Recommendations

1. The rule should eliminate the proposed nondiscrimination provision and allow experience based underwriting at the employer level for insured plans. If the nondiscrimination provision is included in the final rule, existing AHPs underwriting methodology should be grandfathered.
2. The rules should acknowledge the important statutory and regulatory requirements that are already in place for fully insured AHPs. Except for the definition of employer and requested clarifications concerning preemption addressed below, all other provisions of the rule should be limited to self-funded AHPs.
3. The Rules should clarify that ERISA preempts state laws which impose requirements on insurance carriers offering coverage to AHPs which are more restrictive than the requirements which would apply if the insurance carrier is offering coverage to other employers purchasing insurance coverage in the market. Additionally, to the extent legally permissible, the Rules should clarify that state laws which prohibit AHPs from sponsoring a health plan or from self-funding are preempted.
4. We recommend that the DOL bona fide test be modified, not abandoned – AHPs should not be limited to an industry; however, AHPs should be to limited to membership-based organizations, which are tax exempt under Internal Revenue Code Section 501(c), and which are not formed solely for the purpose of providing health benefits.

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5. The proposed Rule should retain the proposed expansion of AHP availability to self-employed family farmers and working owners.

Very truly yours,

Northwest Automotive Trades Association

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