



State of Connecticut GENERAL ASSEMBLY

February 20, 2024

The Honorable Lisa Gomez
Assistant Secretary of Labor for Employee Benefits Security
U.S. Department of Labor, Employee Benefits Security Administration
200 Constitution Ave NW
Washington, DC 20210

Re: Proposed Rescission of AHP Final Rule RIN 1210-AC16

Dear Office of Regulations and Interpretations,

As legislators representing the people of Connecticut, we are in favor of rescinding the 2018 rule which relaxed the criteria for which small businesses could participate in an association health plan (AHP). It is our belief that the rescission of the 2018 AHP rule will have a positive impact on the quality and affordability of health insurance coverage available to small business owners and their employees.

The Employee Retirement Income Security Act (ERISA) provides protection for participants of employee benefit plans by setting minimum standards for private industry retirement and health plans.¹ ERISA permits groups or associations to establish an AHP as a multiple group health plan, if the groups or associations meet the criteria of a *bona fide* employer.²

The Trump administration's 2018 AHP rule relaxed the criteria necessary to qualify as a *bona fide* employer group under ERISA. The three main changes relate to: 1) the purpose of organization; 2) commonality requirement; and 3) "working owners" without "common-law employees."

Prior to 2018, the rule required that a group or association acting as an employer must exist for a purpose *other than* to provide health benefits.³ In 2018, that was changed to requiring a "substantial business purpose" unrelated to providing health coverage or other benefits thereby weakening the business purpose provision. This allowed a group or association to come together for the sole purpose of providing health benefits.

Secondly, there exists a commonality of interest standard. Prior to 2018, the commonality standard required employer members to be in the same trade or business. After the 2018 rule, the standard allowed members to either be in the same trade/business or in the same geographical region. Before this change, geography alone could not be used to fulfill the commonality of interest requirement.⁴

¹ <https://www.dol.gov/general/topic/retirement/erisa>

² <https://public-inspection.federalregister.gov/2023-27510.pdf> (pages 3-4)

³ Ibid. (page 9)

⁴ Ibid. (page 10)

Lastly, prior to 2018, business owners were required to have "common-law employees." After the 2018 rule, working business owners who do not employ anyone were allowed to count themselves as both an "employer" and "employee."⁵

Weakening the criteria for what constitutes a bona fide employer allows for and encourages the growth of AHPs which is incredibly problematic.

The popularity of AHPs stems from the belief that they offer an alternative to more traditional and costly health insurance coverage. If an AHP has enough members to qualify as a large group, they are not subject to Affordable Care Act (ACA) protections and are therefore not required to offer members comprehensive coverage. Essentially, AHPs are junk insurance used to circumvent the important protections afforded by the ACA but are advertised and embraced for their "cost effectiveness."

When members obtain coverage from an AHP, they may unknowingly obtain "skinny" coverage which may not include essential benefits such as prescription drug and inpatient hospital coverages.⁶ Some members (mostly those in good health) may accept the risks associated with limited coverage. For these members, they may believe the cost savings outweigh the risks – until they fall ill and find themselves underinsured leaving them exposed to financial ruin during a time when they are most vulnerable. Furthermore, AHPs have historically been known for their "unscrupulous" business practices and financial mismanagement leaving members at risk of being held responsible for medical bills should the AHP become insolvent.⁷ Documented cases of large-scale fraud show hundreds of thousands of people being victimized by AHPs, leaving them responsible for hundreds of millions in unpaid medical bills.⁸

AHPs have had a tremendously negative impact on the one thing they attempt to address: cost. AHPs have been shown to affect the individual and small group insurance market via market segmentation. When AHPs offer "skinny" coverage, they remove a significant portion of healthy people from the larger market, leaving behind a less healthy, higher-risk pool to insure.⁹ This results in higher premiums for those remaining.

The undersigned legislators are in full support of this proposed rule to rescind the 2018 AHP rule. This rescission would limit the growth of AHPs and protect citizens. Given that AHPs have a history of fraud, typically offer less robust coverage, and damage the marketplace, we applaud this Administration's efforts to restrict the expansions allowed by the 2018 rule. Junk insurance plans, and any policies that attempt to curtail the ACA protections afforded the American people, need to be eliminated. Our constituents work hard to provide for their families and any health plan that could potentially saddle them with debt has no place in Connecticut, or the United States.

Together, as members of the Connecticut General Assembly, we strongly support the rescission of the 2018 AHP Rule. Furthermore, we would support additional action to constrain the creation and use of AHPs, as they offer less protection than fully-insured plans and cause costly and discriminatory market segmentation.

Sincerely,

Senator Martin Looney
Senate President Pro Tempore

Senator Bob Duff
Senate Majority Leader

Senator Matt Lesser
Co-Chair, Human Services Committee

Senator Jorge Cabrera
Co-Chair, Insurance & Real Estate Committee

Senator Saud Anwar
Co-Chair, Public Health Committee

Senator Julie Kushner
Co-Chair, Labor & Public Employees Committee

⁵ Ibid. (page 11)

⁶ Ibid. (pages 21-22)

⁷ Ibid. (pages 15-16)

⁸ <https://www.protectourcare.org/reminder-association-health-plans-have-long-history-of-fraud-and-unpaid-claims/>

⁹ <https://www.cbpp.org/research/health/association-health-plan-expansion-likely-to-hurt-consumers-state-insurance-markets>

Senator Ceci Maher

Senator Rick Lopes

Senator Jan Hochadel

Senator James Maroney

Representative Jillian Gilchrest
Co-Chair, Human Services Committee
Representative Sarah Keitt

Representative Aimee Berger-Girvalo

Representative Gary Turco

Representative Kai Belton

Representative Mike DeMicco

Senator Mae Flexer

Senator Martha Marx

Senator Gary Winfield

Senator Herron Gaston

Representative Susan Johnson

Representative Mary Fortier

Representative Christine Conley

Representative Maryam Khan

Representative Kevin Brown

Representative Josh Elliott

Senator Derek Slap

Senator Marilyn Moore

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Representative Kate Farrar

Representative Moira Rader

Representative Christine Palm

Representative Kadeem Roberts

Representative Corey Paris

Representative Anne Hughes