

August 27, 2018

Commissioner Jessica K. Altman
Insurance Department
Commonwealth of Pennsylvania
1326 Strawberry Square, 13th Floor
Harrisburg, PA 17120

Dear Commissioner Altman,

The undersigned organizations have joined together to form the Coalition to Protect and Promote Association Health Plans. Our organizations are interested in offering quality and comprehensive health coverage to small employers, and in some cases, to self-employed individuals with no employees (i.e., sole proprietors) through “association health plans” (AHPs). Our Coalition also intends to develop principles and standards that other organizations seeking to establish AHPs should follow. We share your interest – and the interests of other State regulators and the Department of Labor (DOL) – to fight against any potential fraudulent actors in the AHP marketplace. We want you to know that our Coalition is ready, willing, and able to partner with you and other policymakers to ensure that employees and sole proprietors are protected.

In advance of the effective date of the recently released DOL regulations applicable to AHPs, your Department directly informed the Federal government – and indirectly informed private entities like the organizations in our Coalition and the insurance carrier community – that Pennsylvania intends to rely on the “look-through” rule developed by the Obama Administration’s Department of Health and Human Services (HHS). As explained in a CMS Insurance Standards Bulletin issued on September 1, 2011,¹ an insurance carrier underwriting an AHP must “look-through” the group sponsoring the fully-insured AHP to the underlying size of the AHP member. If the AHP member employs 50 or fewer employees, the insurance carrier must apply the Affordable Care Act’s (ACA’s) “small group” market reforms to the AHP health coverage. In addition, if an individual is an AHP member, the insurance carrier is required to impose the ACA’s “individual” market reforms to this individual’s coverage.

As you may also know, the CMS Insurance Standards Bulletin includes an important exception to the “look-through” rule. Specifically, in cases where a fully-insured AHP is sponsored by a “bona fide group or association of employers” as defined under the Employee Retirement Income Security Act (ERISA) (hereinafter referred to as a “bona fide group”), an insurance carrier must treat the AHP health plan as one, single group health plan. The Bulletin explicitly states that in this case, the number of employees employed by *all* of the employers participating in this “bona fide group” determines whether the AHP health coverage is subject to the “small group” or the “large group” market rules.

In other words, the employees of *all* of the employer members participating in the “bona fide group” will be aggregated for purposes of determining the size of the “bona fide group.” If – upon aggregating the employees employed by all of the employer members – an insurance carrier determines that the “bona fide group” includes 51 or more employees, the insurance carrier must treat the fully-insured AHP health plan as a “large group” market plan (and thus apply the “large group” market insurance rules to the AHP health coverage).

¹ CMS Insurance Standards Bulletin, September 1, 2011 at https://www.cms.gov/CCIIO/Resources/Files/Downloads/association_coverage_9_1_2011.pdf.

We agree that – in accordance with HHS’s “look-through” rule – if a fully-insured AHP is sponsored by a group that is *not* considered a “bona fide group” as defined under ERISA (hereinafter referred to a “non-bona-fide group”), then the Department must require an insurance carrier to apply the ACA’s “small group” market rules to employer members employing 50 or fewer employees (and in cases where an individual is a member of the “non-bona-fide group,” the ACA’s “individual” market rules shall apply). However, we believe that if a fully-insured AHP is sponsored by a “bona fide group,” then the Department *must* allow an insurance carrier to apply the “large group” market rules to the AHP health coverage in cases where the aggregated number of employees employed by all of the employer members participating in the “bona fide group” is 51 or more.

Based on the foregoing, we are interested in knowing whether the Department continues to rely on the 2011 CMS Insurance Standards Bulletin, and in particular, whether the Department will allow an insurance carrier to apply the “large group” market rules to fully-insured AHP health coverage sponsored by a “bona fide group,” which is consistent with the 2011 Bulletin.

We want to emphasize that our Coalition intends to work tirelessly to ensure that employees of small employers and sole proprietors have access to quality and comprehensive health coverage through an AHP. Our Coalition wants to partner with you in a constructive way, and to do that, our organizations need to know whether the Department will recognize fully-insured AHP health coverage sponsored by a “bona fide group,” or whether the Department will apply HHS’s “look-through” rule to *all* fully-insured AHPs, regardless of whether the health coverage is sponsored by a “bona fide group” or a “non-bona fide group.”

We thank you in advance for your consideration of these very important issues. Please do not hesitate to reach out to Jim Clarke with the American Society of Association Executives at jclarke@asaecenter.org with any questions you may have, or with any formal correspondence that clarifies the manner in which the Department intends to apply the insurance rules applicable to fully-insured AHPs.

Sincerely,

American Farm Bureau Federation
American Society of Association Executives
American Veterinary Medical Association
Financial Services Institute
Foundation for Government Accountability
Indiana Credit Union League
International Franchise Association
National Apartment Association
National Association of REALTORS®
National Restaurant Association
National Marine Manufacturers Association