



STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR

CHRISTOPHER T. SUNUNU
Governor

February 23, 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

Dear Assistant Secretary Rutledge,

On January 4, 2018, the U.S. Department of Labor (DOL) issued a Notice of Proposed Rulemaking relating to Association Health Plans (the “AHP Proposed Rule”) which expands the large group treatment of AHP coverage. As a supporter both of AHPs and of state sovereignty in insurance regulation, I wanted to offer the following comments as this process moves toward issuance of a final rule.

My administration has long supported allowing small-business owners to join together through trade and professional associations to purchase health insurance for themselves and their employees through vehicles such as AHPs, and I am encouraged to see the availability of these options increasing as a result of changes in federal rules and guidance pursuant to President Trump’s October 2017 Executive Order. As laid out in the proposed rule, AHPs would allow insurance pooling and purchasing techniques that would expand consumer choice by offering more opportunities for employers and employees, including self-employed individuals, to find a health care arrangement that best suits them and their families.

At the same time, I am also mindful that it is important for states to continue in their primary role as insurance regulators to ensure that AHPs remain solvent and provide the coverage they promise. In particular, it is important to include provisions to ensure solvency and prevent fraud.

In providing new coverage options for employers and employees through the new rule, it is important to allow states sufficient time to react. In New Hampshire, our individual and small group markets are facing significant challenges, and we ensure that broadening the availability of AHP coverage has a positive impact.

Given the complexity of the forces affecting the state’s health insurance markets, we recommend that the effective date of the AHP rule be set at a time that ensures the greatest likelihood of success. New Hampshire has been proactive and creative in exploring market stabilization efforts such as reinsurance, risk adjustment, and possible pursuit of a section 1332 waiver.

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In addition, we have already begun the process of analyzing the impacts of expanded availability of AHP coverage on the individual and small group health insurance markets, particularly with respect to risk selection and premium increases. You should ensure the rule's effective date provides state leaders with the ability to enact legislation creating market stabilization measures that are designed with a full understanding of the federal legal framework in which they will operate.

Finally, we recommend that the final rule provide clarity with respect to regional operation of AHPs and offer some deference to state decision-making in this area. In New Hampshire, state legislators chose in 2013 to define the state as a single geographic rating area, as a way of ensuring that coverage continued to be available in northern New Hampshire and other high-cost areas. If AHPs have the unfettered ability to define a regional or metropolitan area, the availability of coverage in higher-cost areas could be jeopardized. New coverage options should be made available throughout the state, not just in more affluent areas.

Thank you for your consideration of these comments.

Sincerely,



Christopher T. Sununu
Governor