



March 6, 2018

Jeanne Klinefelter Wilson, Deputy Assistant Secretary  
Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington DC, 20210

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

Submitted electronically via <http://www.regulations.gov>

Dear Ms. Klinefelter Wilson:

UnityPoint Health (UPH) appreciates the opportunity to provide comments on the proposed rule related to Association Health Plans (AHPs) published in Vol. 23, No. 4, Federal Register on January 5, 2018. UPH is one of the nation's most integrated healthcare systems. Through more than 30,000 employees, our relationships with more than 290 physician clinics, 38 hospitals in the metropolitan and rural communities, and home care services throughout our 9 regions, UPH provides care throughout Iowa, Illinois, and Wisconsin. On an annual basis, UPH hospitals, clinics, and home health provide a full range of coordinated care to patients and families through more than 6.2 million patient visits. In addition, UPH is actively engaged in numerous initiatives which support population health and value-based care.

UPH works with a broad range of stakeholders who provide health coverage to their employees. Over the past decade, we have closely followed and worked with state and federal policymakers to comply with the ever-changing regulations regarding coverage and scope of benefits with the goal of improving the quality of care for individuals at an affordable cost. While there have been challenges in bringing down costs in the individual market, we are supportive of efforts that make coverage more affordable and provide coverage to a broad-based population. We also believe that empowering states to pursue innovative solutions that promote greater flexibility and choice creates opportunities for lowering costs and is worthwhile given the current uncertainty surrounding the individual marketplace.

We appreciate the Administration's outreach to employers of large and small businesses in considering a path forward on this proposed rule. We believe this relief is urgently needed for consumers and encourage the Administration to outline a path forward as soon as possible so associations can form for plan year 2019. With that, we respectfully offer the following comments:

### **PROMOTING GREATER HEALTH CARE OPTIONS IN 2019**

President Trump's Executive Order 13813 dated October 12, 2017, directed the Secretary of Labor to consider proposing ways to expand access to health coverage by enabling employers to form AHPs, which are a type of multiple employer welfare arrangement (MEWAs) established by bona fide associations of employers. We view this as an opportunity to explore providing greater options to consumers at a time when few options exist. Furthermore, this initiative will help small businesses at a competitive disadvantage tap into some of the benefits of being a large employer.

On January 5, 2018, the U.S. Department of Labor proposed rules to allow more employers to form an AHP to offer a group health plan. Currently, employer groups cannot form AHPs for the sole purpose of providing health coverage. We support the proposed regulation's effort to increase flexibility in the "commonality of interest" test for employers. The proposed rule would allow for AHPs to be established by "(1) employers being in the same trade, industry, line of business or profession; or (2) employers having a principal place of business in a region that does not exceed the boundaries of the same State or the same metropolitan area (even if the metropolitan area includes more than one State)." Given the strain on local small businesses, including allied industries which support large industries in their day-to-day operation, the proposed regulations appear designed to provide meaningful relief.

Timely Implementation to Support State Action: We believe the Administration can go further in its proposed regulations. In Iowa, the state has already begun exploring changes in state insurance laws in an effort to align with federal law. In January 2018, the Iowa State Senate introduced SF 2349, an act relating to association health plans. The bill requires the Commissioner of Insurance to adopt rules that allow for the creation of AHPs that are consistent with the U.S. Department of Labor's regulations. The Legislature is supportive of this initiative and enthusiastic about enabling employers to form AHPs as soon as possible. On February 19, 2018, the Committee on Commerce favorably approved the bill. Although UnityPoint Health may be poised to form an AHP under new state laws starting in 2019, implementation is stalled pending clarification from these proposed federal rules.

Scope of Commonality of Interest: We believe further flexibility in meeting the "commonality of interest" test would provide greater options to small businesses and allied employers within an industry, thus lowering overall costs. One such way the proposed rule strives to do this is through the "dual treatment of working owners as employers and employees." We support this dual treatment. In addition, we would support contractors of eligible employers being able to participate in AHPs and are encouraged by the Administration's acknowledgement of this in the proposed rule.

Geographic Area Definition: Furthermore, as a multistate employer, we encourage the Administration to consider ways associations could offer plans regionally, including across state lines and beyond

metropolitan areas. An expanded geography would further allow employers to offer more affordable coverage options. First and at a minimum, we encourage the Administration to consider state geographies as encompassing any border combined, metropolitan and/or micropolitan statistical areas as classified by the U.S. Office of Management and Budget (OMB). It should be the employer's choice to define these border communities that appropriately capture its employment base. For instance, in the state of Iowa, we would suggest that Iowa AHPs could be made available to border communities in the Omaha-Council Bluffs-Fremont, NE-IA Combined Statistical Area (CSA), the Sioux City-Vermillion, IA-NE-SD CSA, Davenport-Moline-Rock Island, IA-IL Metropolitan Statistical Area (MSA), Omaha-Council Bluffs, NE-IA MSA, Sioux City, IA-NE-SD MSA, Burlington, IA-IL Micropolitan Statistical Area, and/or Fort Madison-Keokuk, IA-IL-MO Micropolitan Statistical Area. It is quite common for the employers and employment pools to span multiple states. Second, we urge the Administration to consider a broader regional definition that would allow plans to be offered regionally in contiguous states where there is an employment nexus. UnityPoint Health has a presence in Iowa, Illinois and Wisconsin. For our employees in Peoria, Illinois, for example, we believe a regional approach would introduce greater competition by giving consumers access to more affordable products that meet their needs when combined with Iowa.

#### **PROMOTING ACCESS AND CHOICE**

The Affordable Care Act (ACA) intended to address several gaps in coverage and treatment. Despite the gains in coverage, the law is still not working as intended. While there is no question that the individual marketplace provides needed and crucial coverage for certain consumers, many Americans are still uninsured and many consumers with marketplace insurance often are not realizing the cost savings or access to quality care that was promised under the ACA. We believe AHPs enable employers to offer health coverage alternatives that provides their employees with greater choice and offers affordable options.

To promote access and choice, AHPs should appropriately be viewed as reasonably priced insurance products outside the individual marketplace that do not, and should not, have the restrictions associated with the ACA-compliant health care plans. By allowing small and large employers to band together for efficiencies, their employees benefit from tailored offerings that should be distinguishable from the individual marketplace in coverage and cost. AHPs have the potential to provide coverage for tens of thousands of Midwest employees in the hospitality, farm, and medical industries, among others, including self-employed entrepreneurs.

As such, we urge the Administration to resist hamstringing AHPs with rules and plan restrictions intended for the individual marketplace. We do not agree with the connotation that differentiated coverage offerings are discriminatory and require "protections" outside current state regulations and fraud and abuse provisions. Instead the free market should offer a menu of healthcare coverage options that suit individual needs and preferences. To promote meaningful and affordable alternatives, AHPs flexibility must include:

Exemption from ACA Risk Adjustment Payments: For the individual and small group markets, the ACA requires transfers of funds from plans with lower-risk enrollees to plans with higher-risk enrollees.

These transfers should not apply to AHPs, whose offerings are now classified as large group plans. This exemption promotes transparency and allows enrolled members to understand that their premiums are used to support their plan and coverage.

Use of Targeted Risk Pools: AHPs should not be included in the ACA single risk pool mandate that covers all enrollees across plans offered by the issuer. Again, the ACA limited these provisions to the individual and group markets, and for AHPs with large group plans, this single risk pool requirement should not apply. Instead, associations should be permitted to tailor their AHP products to eligible employees, including differentiated risk pools to allow the underwriting process to reflect the claims histories of their enrolled employees. If the Administration is concerned that the ACA single risk pool will shrink in number and increase in acuity, the Administration should not saddle AHP participants with this burden, but should examine more direct solutions. We would encourage the Administration to establish high-risk pools in the individual marketplace targeting specific populations of utilizers to achieve this purpose.

Promote Flexible Benefit Design: We do not believe that all consumers have equal or even similar needs, nor should they be forced to purchase a mandated set of potential benefits. Large group plans are exempt from the ACA essential health benefits requirements. We believe that employment-based AHPs with large group plans should be similarly exempt and afforded the flexibility to offer benefits that best suit their employees' needs. This leaves benefit design and scope to the discretion of the AHPs without the ACA-imposed floor. While offered plans will undoubtedly have different coverage terms from ACA-compliant plans, eligible employees are not required to enroll and may still choose an ACA-compliant plan if that option better aligns with their healthcare needs and preferences.

Similarly, the proposed rule prohibits AHPs from conditioning eligibility for membership or benefits or from varying members' premiums based on their health status. This includes the coverage of pre-existing conditions. These ACA prohibitions restrict AHP coverage options and greatly impact affordability for the employment-based group as a whole. We request that the Administration re-evaluate imposing ACA-restrictions on this select category of large group plans. As with the essential health benefits, we believe that while health status considerations are appropriate within the individual market in combination with high-risk pools, these restrictions should not be placed on large group plans.

In reiterating our preferred direction, UnityPoint Health supports efforts to stabilize the individual insurance market because we believe it is a necessary tenet of a healthy insurance market. The individual market should carry many of the protections that exist today, and consumers should be shielded from the high costs that can occur in health care. We also believe AHPs are a viable option to offer lower cost plans for consumers and encourage the Administration to explore every possible avenue in providing greater choice at an affordable cost to consumers.

## **CONCLUSION**

UnityPoint Health welcomes the Administration's direction in enabling the formation of AHPs for plan year 2019. While we generally support efforts to allow AHPs to be treated as a large group plan, we

proposed several areas for additional regulatory flexibility to promote greater employer participation and to increase consumer options and affordability via benefit design. We encourage the Administration to take swift action in making this a reality and to collaborate with states who are working in step to provide greater choice and affordable coverage to their constituents.

We appreciate the opportunity to provide comments on proposed regulations regarding Association Health Plans. To discuss our comments or for additional information on any of the addressed topics, please contact Sabra Rosener, Vice President, Government and External Affairs at [Sabra.Rosener@unitypoint.org](mailto:Sabra.Rosener@unitypoint.org) or 515-205-1206.

Sincerely,

A handwritten signature in blue ink that reads "Sabra Rosener".

Sabra Rosener, J.D.  
Vice President, Government and External Affairs  
UnityPoint Health