
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9974-P; CMS 9989-P
Baltimore, MD 21244-1850

Attention: CC:PA:LPD:PR (REG-131491-10)
Internal Revenue Service
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

RE: Proposed Rules for Health Insurance Premium Tax Credit (REG-131491-10);
   Establishment of Exchanges and Qualified Health Plans (CMS-9989-P);
   Eligibility Determinations and Exchange Standards for Employers (CMS-9974-P)

Dear Sir or Madam:

HR Policy Association ("HR Policy") appreciates the opportunity to share its views regarding the above referenced proposed regulations concerning the establishment and operation of health insurance exchanges under the Patient Protection and Affordable Care Act (PPACA), and their potential impact on the ability of employers operating in multiple states to maintain uniform health benefits programs for their employees.

HR Policy Association represents the chief human resource offices of more than 330 of the largest employers in the United States. Collectively, their companies employ more than 10 million employees in the United States, nearly nine percent of the private sector workforce. Together the member companies spend more than $80 billion annually providing health insurance to tens of millions of American employees, their dependents and retirees. As the senior human resource executive for their companies, HR Policy Association members play a lead role in health care strategy, design, and implementation, and they are responsible for health care strategy, design, and the implementation of changes required by PPACA.

HR Policy supports, and incorporates by reference, the comment letter dated October 31, 2011 filed by the coalition of Employers for Flexibility in Health Care. Yet, the Association files this comment letter to emphasize the profound negative impact that the establishment, implementation, and operation of exchanges will have on large multi-state employers, their employees, and their dependents should the state exchanges seek to impose non-uniform, state-level requirements on self-insured employer-sponsored health plans.
Continue to Allow Multi-State Employers To Operate Uniform Health Care Programs in Multiple States

One of HR Policy’s chief concerns in the establishment of the health insurance exchanges is that large multi-state employers continue to have the ability to offer and administer health care benefits in a uniform manner. The ability of large multi-state employers who provide health care on a self-insured basis to administer their programs uniformly across America has been a relative success in the otherwise flawed health care system in the United States. Their ability to do so is the result of the strong preemption provision under the Employee Retirement Income Security Act (ERISA).

The ERISA preemption clause prohibits state and local governments from imposing requirements on self-insured employer-sponsored plans that would interfere with the ability of these companies to design and maintain health care plans that meet their unique needs. Nationwide uniformity in benefit design and administration is extremely important because it promotes substantial efficiencies, and it significantly reduces health care costs to employers, employees, and dependents, ultimately allowing employers to develop a healthier, more productive work force. In addition, it streamlines communications and promotes better understanding of coverage options by allowing employers to offer a standard set of benefits across the country. Further, it allows employers to obtain better pricing with national or regional healthcare providers by allowing them to negotiate contracts on a national basis. Finally, uniformity permits companies to provide similar benefits to their workers (regardless of where they reside), which promotes equity and the ability of employees and retirees to freely move from state to state and city to city without concern for benefit changes.

In view of the above, HR Policy is concerned that the states, in establishing the health insurance exchanges under PPACA, may undermine the ability of multi-state employers to uniformly design and administer health benefits. This would result in subjecting such employers to numerous sets of operating and reporting requirements, a change that would be administratively burdensome and costly for them, and it may make it unworkable for these employers to continue providing employer-sponsored benefits.

HR Policy strongly urges that no attempts be made to weaken ERISA preemption in connection with the creation and implementation of health insurance exchanges or any aspect of PPACA implementation going forward. Moreover, the Association strongly urges the Agencies to make it clear to the states currently implementing exchanges that attempts to directly or indirectly regulate self-insured ERISA plans either through new (non-statutory) plan design or reporting requirements, are preempted under federal law.

Large Employers Seek a Timely, Efficient, and Coordinated Launch of Health Insurance Exchanges

We realize that creating the infrastructure to establish and operate exchanges in all 50 states, and coordinating with the vendors who will be participating in these exchanges, is a massive undertaking. Yet, PPACA provides for states to begin operating health insurance exchanges on January 1, 2014. And by March of 2013, employers must provide their employees notice of the coverage they intend to provide in 2014, information related to exchange coverage, and notify employees that they may be able to obtain coverage through an exchange. However, it is quite
possible that all such information may not be available in March 2013, making it impossible for employers to meet the statutory deadlines through no fault of their own. Thus, the Agencies should provide a non-enforcement safe harbor providing that employers would not be required to provide the health care exchange related information for a reasonable period of time after the information is available.

Employers Want the Federal and State Governments to Maximize Uniformity and Consistency in Exchange Administration

While employers recognize that the information provided to an employee about exchange options will vary to some degree depending on the state in which he or she resides, HR Policy urges the Agencies to take into account the need for an optimal level of uniformity in the manner in which exchanges are administered, including enrollment practices, description of plan offerings, and communications to consumers. Employers believe exchanges should allow for innovation and accommodate the demographic and geographic differences of eligible populations. However, many functions can be standardized across the nation to facilitate administrative ease. To this end, it is necessary to minimize administrative burdens and streamline reporting requirements, which can be done at a federal level. HR Policy supports the idea advanced in HHS’s proposed rule contemplating that the new reporting requirements under PPACA would be done through uniform templates or centralized databases. In the Association’s view, state-by-state reporting requirements undermines the benefits of ERISA preemption and increases administrative burdens and costs and makes it more difficult for self-insured multi-state employers to continue to offer employer-sponsored health plans.

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We appreciate your consideration of our concerns and welcome the opportunity for HR Policy Association to work with the federal government to that ensure health insurance exchanges provide quality affordable care in a manner that does not run afoul of ERISA preemption creating unsustainable new design and administrative costs and burdens on the self-insured health plans.

Sincerely,

Michael Peterson
Vice President, Benefits & Employment Policy
Associate General Counsel
HR Policy Association