

Labor Dept. Opens Door for Small-Business Health Plans

By: *Madison Alder*

The Labor Department's rule to expand access to small-business health plans is complete. The final regulation released June 19 comes just a few months after it was first proposed by the Labor Department, at the direction of President Donald Trump.

The rule expands access to association health plans by loosening the definition of "employer." Small businesses and self-employed individuals, known as working-owners, will be allowed to band together by industry or geography to obtain health care as a large group. The rollout of the plans will be phased. Some can begin offering coverage as soon as Sept. 1, with rollout dates going through to next year.

The DOL proposed the rule in January after it was asked to open up association health plans in an October executive order. The finalized version of the rule was at the White House Office of Information and Regulatory Affairs for about a month and a half before being approved and released to the public.

The rule will "level the playing field" by giving small businesses the opportunity to access affordable health care the same way large corporations do, Labor Secretary Alexander Acosta said on a June 19 press call. Small businesses currently lack the scale to bargain as effectively as large companies, Acosta said. The regulation will allow more associations such as nationwide industry groups and chambers of commerce to offer health insurance as a large group, he said.

Critics have countered that the rule's lack of requirements will result in low-cost, low-coverage plans that will lure healthy people out of the Affordable Care Act exchanges and leave behind a sicker population. There is also concern that the DOL has ignored the history of fraud among similar small-business health plans in the past.

One area of concern Acosta addressed was state oversight of the plans, saying the Labor Department is "working with state insurance commissioners, who continue to have jurisdiction to prevent and prosecute fraud." Both

supportive and critical stakeholders have called for maintaining state oversight, as state regulators have been instrumental in protecting the plans against fraud in the past.

Plans under the rule will also be subject to the same nondiscrimination clause that prevents against adverse risk selection as large business, Acosta said. The safeguard, which sparked controversy among stakeholders, is unchanged from the proposed rule despite a call from associations with existing health plans to add a "grandfathering" element that would protect them from altering their structure.

The final regulation is largely unchanged from the rule proposed by the Employee Benefits Security Administration in January.

Business Group Cheers:

The release of the rule was applauded by business groups such as Job Creators Network, the International Franchise Association, and the National Retail Federation.

"This is potentially revolutionary," Alfredo Ortiz, president and CEO of JCN, said in prepared remarks. Ortiz praised the rule for increasing options and competition in order to lower costs for small business.

IFA welcomed the rule's compatibility with franchisers and highlighted an added protection against for joint-employer liability, which it asked for during the comment period. The "safe harbor" prevents small businesses participating in a plan from being liable for claims brought by other employer's workers.

To the National Retail Federation, the rule is just the beginning. The group called the rule an "important step" in expanding small-business health care and advocated for additional association health plan legislation such as the Small Business Health Fairness Act, which passed the House last year.

Lawmakers React:

Support for association health plans is divided mostly

along party lines. That split was highlighted in lawmakers' reactions to the rule.

Several Democratic leaders decried the rule, saying it's a sabotage of the Affordable Care Act and that it's too risky for consumers.

"When people in these low-quality health plans unexpectedly need care, they are often surprised by excessive out-of-pocket costs, which can drive families into bankruptcy and force everyone else to absorb the cost of unpaid medical bills," Democratic Reps. Bobby Scott (Va.), Richard Neal (Mass.), and Frank Pallone Jr. (N.J.) wrote in a joint statement. The congressmen are ranking members of the Education and the Workforce, Ways and Means, and Energy and Commerce committees, respectively.

House Democratic Whip Rep. Steny H. Hoyer (Md.)

said the regulation is an effort by the Trump administration to achieve by executive action what it couldn't through legislation. "Democrats will continue to stand up for the Affordable Care Act and its protections," he said.

Republican leaders, on the other hand, greeted the finalized rule as an escape from the ACA.

"One of the greatest concerns for small business owners is providing affordable health care to their employees," Reps. Virginia Foxx (N.C.) and Tim Walberg (Mich.) said in a joint release. "The failures of Obamacare have resulted in limited coverage options at sky-high prices that hurt American workers and job creators."

Foxx chairs the Committee on Education and the Workforce, and Walberg chairs the Subcommittee on Health, Employment, Labor and Pensions.