

February 18, 2015

The Honorable Sylvia Burwell
Secretary, U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Burwell:

As employer organizations, we urge you to issue a two-year delay of the expansion of the small group market definition as soon as possible. The undersigned entities represent the interests of millions of businesses of every size, sector, and region. It is in the interest of these employers and their employees that we encourage the Department of Health and Human Services (HHS) to consider the harm of expanding the definition of small group market under the Affordable Care Act in 2016 and delay this expansion for three critically important reasons. We urge HHS to immediately delay this expansion to:

1. Preserve the intended timeline in the ACA that afforded businesses subject to the employer responsibility requirements two initial years of offering coverage in the large group market before being subject to the more extensive benefit and rating requirements in the small group market;
2. Protect the ability of employers to select from a broader array of coverage options; and
3. Mitigate the dramatic premium increases that will occur with the expansion.

Preserve Intended Timeline

With the one-year delay of the employer shared responsibility provision for all employers, in addition to the transition relief afforded to businesses with between 50-99 full-time equivalent (FTEs) employees for 2015, failing to delay the expansion of the small group market will cause significant premium increases and market disruption.

Under the implementation timeline as drafted and enacted, the ACA was structured to permit the smallest of the applicable large employers (those with between 51-99 FTEs) to have two full years of offering coverage pursuant to 4980H before moving their plans into the small group market and subjecting these plans to the additional benefit and premium rating requirements of the small group market. These two years have not been afforded, due to transition periods and delays that were unforeseen, but necessary. Similarly, the Small Business Health Options Program (SHOP) was expected to have two years of experience – 2014 and 2015 – where small businesses with fewer than 50 employees could compare and purchase coverage. This too has not happened as intended. Given that these two very significant building blocks have not occurred as anticipated, continuing with a redefinition of small group now would be particularly harmful and disruptive. We urge you to provide this two-year period by delaying the

small group definition expansion until 2018 to ease the premium increases and mitigate the burden to the smallest employers subject to 4980H, as the law's timeline intended.

To further confirm the shared concern about this change, we need only look to the states. Specifically, despite the opportunity to do so earlier, not a single state has elected to expand its definition of the small group market beyond 50 to be effective before 2016. This fact coupled with the delay and transition relief means that unless additional action is taken, when businesses with 51-99 FTEs will first have to start offering coverage under the employer mandate in 2016, they will have to do so in the small group market. Not only would this require the smallest of the applicable large employers to offer more prescribed benefits with less flexibility, it would change the market rules that apply to the plans these businesses must offer the very first year that these businesses are subjected to 4980H. Not only is this unfortunate for employers in this segment, it is not what the ACA anticipated.

Given the decisions to delay several other directly related provisions, it appears consistent and well within the Administration's purview (as well as in the best interest of those who support employer-sponsored insurance) to delay this modification as well. In addition to helping employers and employees, it will allow for additional solutions to be considered before further disruption and additional barriers to access occur.

Protect Coverage Options

Moreover, it is important to understand that expanding the small group market to include groups up to 99 at this time would reduce choice for this employer segment. While national insurers are in virtually every state's large group market, they are only in a portion of the small group markets – which have numerous entry administrative requirements. As a result, many groups size 51-99 will find that they cannot even keep the insurer that they currently have once they are required to buy coverage in the small group market. Providing health insurance is an expensive and difficult endeavor for any employer, but 90 percent of groups with between 50-99 individuals currently do so. We urge HHS not to place the coverage of this segment at risk by reducing choice, imposing changes to benefit design, and subjecting premiums to potentially significant increases.

Mitigate Premium Increases

Further, expanding the small group market to include all groups with up to 100 employees would have an immediate impact on premiums due to new rating rules, required Essential Health Benefits (EHBs), and minimum actuarial value and cost sharing requirements. According to an Oliver Wyman study, as a result of changes in rating rules, roughly two-thirds of members in groups with between 51 and 99 employees would receive a premium increase of 18 percent on average in 2016. The application of EHB requirements could increase premiums by 3 to 5 percent for groups with between 51 and 99 employees on top of the impact from changes in rating rules. Further, as rates increase, more mid-sized groups may drop coverage or self-insure, resulting in an additional 6 to 18 percent rate increase for mid-sized groups in 2016. The

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increased premiums will decrease the ability for businesses and employees to provide and purchase coverage.

Therefore, we urge you to issue an announcement via Guidance or Notice as soon as possible to delay this change in the small group definition. As important as a delay in this change is, the timing is extremely narrow. If a delay is granted too late, insurance companies and carriers will have already filed rates and plans with the expanded small group definition and businesses and workers will still face the same negative impacts.

As we continue to support health care reform that builds on and reinforces the employer-sponsored system, we look forward to working with you and your colleagues to protect American jobs and the employers that create them.

Sincerely,

American Hotel & Lodging Association
American Rental Association
Associated Builders and Contractors, Inc.
American Supply Association
Auto Care Association
Council for Affordable Health Coverage
Healthcare Leadership Council
International Franchise Association
National Association of Health Underwriters
National Association of Home Builders
National Association of Manufacturers
National Association of Wholesaler-Distributors
National Club Association
National Restaurant Association
National Retail Federation
Printing Industries of America
Society of American Florists
U.S. Chamber of Commerce