February 19, 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 Sir

I am writing on behalf of the Maine Association of Health Underwriters, a chapter of the National Association of Health Underwriters

We oppose the loosening of the ERISA statute allowing Association Health Plans;

1. The current inability of the Federal or State Governments to effectively prevent abuses in the MEWA market resulting in significant and costly adverse selection in the respective State's small group market
2. The questionable rewording of the term "employer" in ERISA to allow these plans to exist appears to not to be interpreting the intent of Congress when the law was enacted but changing the intent of Congress by regulation.

The position on government's inability to curb abuses is based on our collective years of experience in this field and having witnessed the failure of prior Association plans resulting in members losing insurance and providers losing money on unpaid claims. Association Health Plans (AHP) is an idea which has been tried multiple times in the past and has never been shown to work effectively. As much as regulators and legislators have attempted to control the risk selection process, more commonly referred to as "cherry picking" with association managers, the fact is that it's not possible. Regulations

prohibiting an association from declining coverage to an employer based on age, health status or industry do not prevent those managers from only offering their plan to the best risk employers in their region and from finding ways to establish obstacles to keep others from joining.

Many of the proponents of AHPs are trade associations who, on behalf of their members, are grasping for simple answers to control health care costs. There is nothing inherent in this proposed rule that addresses health care costs, only the supposed savings from 'collectively bargaining' with insurance carriers for lower prices. Interestingly, the proposed rule does not offer one example of how exactly this is supposed to work or where it has been successful in the past. There are countless examples, even referred to in the text of the proposed rule where it hasn't worked.

In one part of the proposed rule, DOL admits the inability of the Federal Government to prevent abuses in MEWAs and therefore ceded a level of oversight to the States. Continuing on, the proposed rule then would allow ERISA preemption of state rule for non-insured MEWAs taking on the regulatory obligation it had earlier admitted it was unable to do.

There are examples of MEWA abuses in almost every state, Empire Benefit Plans in NYS for example which left members with thousands of dollars in unpaid bills before it came to the attention of the NYS Department of Insurance, who when alerted, took quick and decisive action to limit the losses. This is one example of why regulation is best left to the States.

Another example of a MEWA lookalike causing a serious adverse selection issue in the small group marketplace in some states is the use of Professional Employer Organizations as a de facto MEWA. We understand that the Internal Revenue Code allows, in some situations, a PEO to act as the employer rather than the service recipient but by allowing them to offer health insurance to their various employer members is not and was never the intent of the Department of Treasury. What it has accomplished is simply a loophole out of the small group marketplace. In addition, with a PEO, there is no way to require the common economic interest component in the AHP proposed rule. Any employer in any industry or field can join a PEO.

We feel that if properly investigated, it will be shown that many PEOs are acting against the best interests of the small group markets in the states they operate.

Finally, with regard to the change in definition in Section 3 (5) of ERISA, it seems clear that the definition as written in the statute is not intended to be changed to include multiple employers acting together as one employer.

"**5)** The term "employer" means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.

We feel that enactment of this rule will result in multiple lawsuits challenging this action causing confusion in the health insurance marketplace until it is finally resolved. This is the secondary issue, however, since no matter how it is resolved, the underlying principle of AHP's is flawed.

Thank you for your consideration of our comments

Sincerely

Kimberly Vance

President, Maine Association of Health Underwriters

Kimberly.vance@tasconline.com