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COMMISSIONER OF INSURANCE

March 6, 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

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

Re: Iowa Insurance Division Comments on Proposed Regulation

Dear Sir or Madam,

The State of Iowa is acutely aware of the need for consumers to have access to affordable health care. In 2018, we saw almost 26,000 individuals leave the individual health insurance marketplace, a dramatic exodus from an already crushed marketplace. Without federal legislation to cure the structural defects of the Affordable Care Act, there are few options left for these consumers.

We appreciate DOL's willingness to review the existing rules regarding multiple employer welfare arrangements ("MEWA") and association health plans ("AHP") to try to expand this option to more consumers.

Iowa does have very successful MEWAs operating in this state. One of these entities has been providing comprehensive health benefits to its consumers for over 40 years. These self-funded entities are required to register with the Iowa Insurance Division and comply with solvency and other regulatory requirements. The success of these groups comes not only from the entities' desire to provide benefits to their members, but the authority of the Iowa Insurance Division to ensure that the entities are adequately solvent and are following fair trade practices.¹

That being said, in order for new MEWAs or AHPs to be successful, there must be regulatory framework in place at the state level to ensure that these entities are financially sound and have the requisite organizational capacity required for success. There have been many failed MEWAs, leaving participants not only without coverage, but on the hook for the claims costs. The interest in providing more options to consumers must be balanced against the need to ensure that these are successful and stable options.

¹ In addition to use of the successful MEWAs in our state as a model of the effective partnership between these entities and the Iowa Insurance Division, we also mention them to ensure that any changes to regulations be made such that these entities are allowed to continue in their current business structure. We do not want further disruption in our marketplace if these entities are unable to continue operation.

State Authority

Currently, any self-funded MEWA operating in Iowa is required to receive a certificate of registration, part of which includes demonstrating the financial solvency of the organization.² As of the date of this letter, legislators are considering amending Iowa's existing legislative structure to loosen the requirements around the date of formation for groups who want to operate as a self-funded MEWA in our state. However, there will still be regulatory requirements in place to ensure organizational and membership stability.

One example of legislation used in Iowa to ensure stability is that any arrangements that wants to register as a self-funded MEWA is required to be administered by an authorized insurer or authorized third party administrator.³ This minimizes the risk of fraudulent or "bad actors" who may improperly facilitate claims payments or fail to establish proper claims practices or benefit structures or networks. This allows us to ensure that the insurer or third party administrator facilitates claims properly and fairly to consumers. It is essential that we are able to keep this, and the other existing regulatory scheme in place in our state. We have successfully regulated MEWAs for many years, and feel that state regulation is key to ensuring that the consumers who participate in such arrangements are protected.

Solvency Regulation

Currently, there is limited federal solvency review of MEWAs, with the individual states taking their own approach for MEWAs that operate within their borders. Iowa has a strong interest in regulating the stability of such entities, and has treated them akin to a mini-insurance company with minimum regulatory surplus, capital, and stop loss requirements. Once there are MEWAs operating across state lines, it becomes difficult to determine which state regulator is responsible for ensuring the financial solvency of self-funded MEWAs. Requiring each state to monitor and regulate each MEWA that wants to operate within its state is costly both to the regulators and to the entities that would be required to obtain approval in each jurisdiction. Substantial state resources will be expended to ensure compliance with financial and membership stability criteria. However, such compliance is vital to the success of a self-funded MEWA, which in turn is critical to those employer members.

Consumers who participate in MEWAs are vulnerable when the state's ability to effectively regulate these groups is compromised. Transparency and disclosure requirements serve an important consumer protection mechanism. Iowa consumers deserve to be protected, and not left with outstanding claims when a poorly established MEWA is unable to adequately support its claims costs. This can have huge impacts on the employer groups, in that they can go bankrupt if they get left holding the bag when the MEWA folds and they must pick up the remaining costs. In a state full of small businesses, we need to protect that community and the benefits they, in turn, provide to the state.

One example of comes when you consider the following guarantee mechanism as a requirement for registration in our state: *A mechanism approved by the commissioner to ensure that claims shall be paid in the event a member of the MEWA is unable to comply with the MEWA's contribution requirements.*⁴ This

² See Iowa Code Chapter 507A.4(9) and Iowa Administrative Code Chapter 191-77.

³ See Iowa Code §507A.4(9).

⁴ Iowa Administrative Code Chapter 191-77.2(1)(i).

protects other employer groups by ensuring that claims will be paid in the event that one member of the MEWA is unable to comply with contribution requirements.

Given the foregoing, it is essential that the proposed regulations not inflict or preempt the existing authority at the state level to regulate the solvency of self-funded MEWA entities. While there are avenues to explore regarding multi-state regulation of these entities, at a minimum, the underlying ability of the state to regulate must remain. The DOL should emphasize the importance of MEWA solvency requirements through mandating MEWAs to comply with state solvency standards as part of the requirements of operation in any state.

Membership Stability

Stability of the organization is not just defined by its financial conditions. The membership base is equally important to the long-term stability of the group. This is derived both from the initial creation of the association and the continued stability and membership interest.

The eligibility parameters proposed in the rule would expand both the definition of employer and allow the group to exist over a geographic area. We share the concern expressed by the NAIC relating to the definition of state or metropolitan area, which is unclear in the current draft regulation. Specifically, we suggest that the DOL define a metropolitan area consistent with the definitions adopted by the Office of Management and Budget, which is used by the census bureau and other federal agencies. The lack of clear guidelines around the definition of “region” is troubling as an AHP can define a region as they deem fit. This may lead to an AHP defining a region in a manner to exclude certain areas and certain potential consumers.

When the definition of employer is relaxed and the commonality of interest test extended, the connection between the employer and the MEWA may become tenuous. This directly impacts the stability of the group. As the members feel less tied to a specific association they are likely to move from group to group until they find the policy at the price point they want. While this, on its surface, may benefit the consumers, it ultimately will jeopardize the stability of the groups as individuals move in and out.

For example, influx of members in and out of the group causes challenges in setting premium rates and cause significant financial disruption for the group and its members. In a self-funded arrangement, if claims are not properly funded, then the members of the group will be responsible.

Membership stability is critical – if employer groups are allowed to jump in and out of an association plan, that movement impacts the stability of the association plan as a whole. There must be commitments in place from the employer groups to the MEWA that would proscribe how long the employer group must remain within the association health plan. This parameters can be established via contractually binding obligations between the MEWA or AHP and the employer groups that are allowed to participate. Even employer groups jumping in and out on a yearly basis can cause significant disruption as it becomes more difficult to adequately price the risk of the association in its entirety. The DOL should emphasize the importance of group stability by requiring employer groups be part of the MEWA for no less than five years. Further, we suggest requiring that once an employer group leaves an association group, it is unable to rejoin that association group for a set period of time. This would prevent employer groups from signing up for a more comprehensive, and thus expensive, plan for a few months to receive significant treatment,

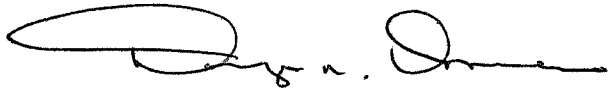
and then jump back and forth between the comprehensive and less comprehensive groups anytime there is anticipated medical costs.

Impact on Other Markets

In considering the importance of establishing membership stability, this principle is necessary to ensure that use of MEWAs or AHPs does not further disrupt the existing individual or small group markets. By requiring membership stability rules, the influx of consumers in and out of both these associations and the individual market would be limited. States encounter difficulties when individuals “churn” in between the individual health insurance marketplace and their Medicaid program, and similar “churn” between these markets should be avoided. As one example, states could have discretion to require that any individual or working owner who wants to join a MEWA or AHP must not be eligible for other group health plan coverage under another employer or a spouse’s employer.

Thank you for this opportunity to comment and for the opportunities to continue to partner in this proposal.

Regards,

A handwritten signature in black ink, appearing to read "Doug Ommen". The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping tail.

Doug Ommen
Commissioner