

March 6, 2018

Preston Rutledge  
Assistant Secretary of Labor  
Employee Benefits Security Administration  
Room N-5655  
U. S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

**R.E: Definition of Employer – Small Health Plans RIN 1210-AB85**

Dear Mr. Rutledge:

On behalf of our 130-member hospitals and health systems, the North Carolina Healthcare Association (NCHA) appreciates the opportunity to comment on the proposed rule modifying the definition of “employer” under the Employee Retirement Income Security Act (ERISA) in order to expand access to association health plans (AHPs). We appreciate the Department of Labor’s efforts to “expand access to affordable health coverage, especially among small employers and self-employed individuals, by removing undue restrictions on the establishment and maintenance of association health plans under ERISA.”

NCHA is committed to expanding affordable, high-quality coverage to all North Carolinians. We believe that the proposed rule will support this goal by lowering health care costs for sole proprietors and small employers, whether through (1) having a larger risk pool that is more attractive to insurers or leads to a more stable self-funded coverage, (2) greater negotiating power with insurance companies for insured AHPs and/or health care providers for self-funded AHPs, and (3) reduced administrative costs through economies of scale. In addition, AHPs will have the freedom to customize their benefit packages and reduce costs by offering coverage that better meets the needs of their members.

We support the proposed changes to the definition of “employer” that will expand the types of groups and associations that would qualify as single employers for purposes of sponsoring an ERISA health plan. We support that AHPs will be able to form for the purpose for sponsoring a group health plan and that sole proprietors and other joint owners of businesses will be able to participate, provided any such “working owner.” We are encouraged that the proposed rule maintains certain protections designed to prevent adverse consequences and believe that expanding the criteria to include geographical regions in addition to industries will significantly enlarge the field of eligible employers.

It is our understanding that the rules allowing state regulation of Multiple Employer Welfare Arrangements (MEWA) remain intact. In other words, an AHP, because it will provide coverage to employees of multiple unrelated employers, generally will be subject to state insurance laws. Specifically, under ERISA’s preemption rules, (1) if a MEWA, including an AHP, is fully insured, state insurance regulations can require the MEWA to maintain specified levels of reserves and/or contributions; and (2) if a MEWA is self-funded, in whole or in part, any state regulation may apply to the MEWA so long as it is not inconsistent with ERISA. We believe that having to comply with the insurance regulations of a single or multiple states, which may be very different and even inconsistent with each other, may discourage the formation of AHPs, limit their geographic scope, and/or make their administration significantly more burdensome. In addition, AHPs may be required to provide some benefits pursuant to state law, which may limit the ability of AHPs to design coverage that better meets the needs of their members. The lack of ERISA preemption could be a significant obstacle to cost-effective implementation of self-funded AHPs. We encourage the Department of Labor to identify ways



to issue exemptions from the exception to ERISA preemption for self-funded MEWAs while still maintaining the solvency requirements.

Like others, we are concerned that the expansion of AHPs may lead to adverse selection whereby employers with comparatively younger and healthier employees are drawn to AHPs with less favorable coverage and cheaper premiums while older and sicker individuals remain in the individual and group markets. This has the potential to further destabilize the individual and small group markets in North Carolina. While we believe that the Proposed AHP Rule has the potential to significantly expand access to affordable coverage for the self-employed, sole proprietors, and those employed by small employers, by allowing unrelated employers to offer coverage through associations, we do not want to see these gains offset by the further destabilization of the individual and small group markets. We encourage the Department of Labor to take steps in the final rule to further stabilize the individual and small group markets.

The Department of Labor acknowledged in the Proposed Rule that some AHPs experienced difficulty in the past, leaving both consumers and providers vulnerable to unpaid claims. It is imperative that these past behaviors not be repeated. We agree that AHPs should have a formal organizational structure and that the members should have control of the organizations functions and activities. We encourage the Department of Labor to develop an expanded oversight function to ensure that the final rule is appropriately monitored to ensure that consumers and providers are protected.

Thank you for your consideration of our comments. If you have any questions, please contact me ([slawler@ncha.org](mailto:slawler@ncha.org), 919-677-4229), Ronnie Cook, Finance and Managed Care Consultant ([rcook@ncha.org](mailto:rcook@ncha.org), 919-677-4225) or Jeff Weegar, Vice President of Financial Policy ([jweegar@ncha.org](mailto:jweegar@ncha.org), 919-677-4231).

Sincerely,



Stephen J. Lawler  
President

North Carolina Healthcare Association