Lawyers Insurance
A SUBSIDIARY OF LAWYERS MUTUAL

March 6, 2018

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655, US Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Attn: Definition of Employer – RIN 1210-AB85

Dear Ladies and Gentlemen,

I have had the opportunity to manage the North Carolina Bar Association Health Benefit Trust, an association health plan, for more than 20 years, the first five years as a fully insured program, and the last 15+ as a self-funded plan governed by the laws and regulations of the State of North Carolina. This plan has been highly successful and currently covers about 1,000 law firms and almost 8,000 individuals.

In fact, there are a number of highly successful association health plans set up as Multiple Employer Welfare Arrangements (MEWA's) in North Carolina. *Their success is directly attributable to a well-conceived regulatory scheme that focuses on solvency, rate sufficiency, and provides sufficient rate flexibility to avoid adverse selection,* which is an ever-present risk for any collection of small employer groups.

Our plan covers law firms from just 1 or 2 participants up to law firms with over 100 employees, and our average employer size is only 4 employees. Unlike some other association plans that cater to larger employers, such as those that serve banks for example, the mixture of very small and larger employers creates risks for the stability of the risk pool that makes risk selection indispensable.

Moreover, it seems likely that AHP's formed as a result of this proposed rule will more likely resemble our plan, catering to a wide range of employers, including very small ones. Without some ability to rate based on risk, and specifically claims experience, these plans will be highly likely to fail.

AHP's Will Need to Compete for Participating Employers

In the lead-up to this proposed rule to expand the availability of Association Health Plans (AHP's), it has been frequently said that such a rule would allow small employers to "band together" to achieve economies of scale, create bargaining power and thereby lower rates. It is absolutely essential to understand that in the real world, this is not what happens.

In reality, sponsors and promoters of proposed AHP's will establish plans on faith and **compete** for small employer groups, and each small employer group can choose to participate or not,

8000 Weston Parkway Suite 340 ■ Cary, North Carolina 27513
LIA@LMLNC.com ■ www.LawyersInsuranceAgency.com ■ 919.677.8900 ■ 800.662.8843 ■

both at the outset of the plan and on a continuing basis, depending on what seems best for them. Under a unitary rate structure, as these AHP's are formed and operate, they run the risk of charging either 1) insufficient premium to cover claims, resulting in loss or insolvency; or 2) too high a premium that prevents them from attracting healthier groups and thus having a risk profile that will require even higher premiums, ultimately leading to a death spiral. Any unitary rate structure will make both of these outcomes more likely.

Employees of Different Participating Employers Are Not Similarly Situated

At a minimum, both the size and the benefit offering of participating employers will range broadly and have a substantial impact on proper health plan pricing for each employer.

1) Impact of Firm Size on Health Plan Pricing.

First, size matters greatly and very small employer groups by their nature present a strong adverse selection risk. This is because the 'competition' for these groups is different than for larger employers. Very small employer groups not only have commercial insurance as an option, but they are also much more likely to 1) not provide employer sponsored coverage; and 2) have most or all of their employees not need coverage because they receive it through a spouse's employer; or 3) their employees simply go uninsured. The result is that a much greater percentage of very small employer groups that would seek coverage through an AHP do so because they 'need' coverage. In other words, they seek it because they have more costly health conditions.

So, for example, if an AHP enrolls a group of 40 employees, this group is much more likely to have a representative cross-section of health concerns, than say 20 groups of 2 employees each, and so as a general rule smaller groups will need to be charged more on a relative basis than larger groups.

Traditionally under most regulatory schemes, groups larger than 50 employees are underwritten predominantly on their own claims experience. Such groups would provide substantial stability to new AHP plans, so it is very important to provide rating flexibility for 50+ groups.

2) Impact of Employer Benefit Offerings on Health Plan Pricing.

There are many elements that determine how 'rich' an employer's benefit offering is, and the richness of the offering can have a large impact on pricing. The richness of the benefit offered by employers includes a) the benefit level of the plan being offered; b) the amount the employer contributes to employee premiums; and c) the amount the employer contributes to premiums for the employee's dependents.

An employer that offers a rich benefit plan, and also pays both employee and dependent premiums, will very often have excellent claims experience relative to the rest of the association group. This is for the simple reason that by offering such a rich benefit, most employees and their dependents are likely to participate, and the result is a more stable risk pool and much greater overall premium available for claims. Within an AHP, each employer would determine

the richness of their offering. The plan needs to have the flexibility to provide a rate that is attractive to employers at differing benefit levels.

The over-arching point is that employer practices differ greatly, so it is unwise to treat them as one employer group for health plan pricing purposes. The two differences above are significant, but by themselves are only crude proxies to determine proper pricing.

Rating Based on Claims Experience Will Still Result in Heavy Subsidization of High Risk Employers

Of course, the most relevant factor in determining the financial risk of each participating employer group is its claims experience, which roughly reflects the health conditions within the group. I say roughly because there now exist a large number of prescription drugs that treat a variety of conditions that are enormously expensive. Even with a relatively clean risk pool, having an individual on one of these medications in many cases costs more than the entire employer's premium paid into the plan. If an AHP attracts more than its share of such participants, the plan will be much more likely to fail.

A modestly tiered rate structure, where the highest rate tier is less than 2 times the cost of the lowest rate tier, serves the purpose of making reasonable cost coverage available to all potential participants and provides a tool to manage risk and maintain the stability of the risk pool. Even under such a tiered rate structure, those groups in the lower cost tiers will still heavily subsidize those groups in the higher cost tiers.

For the employer groups in the highest rate tier, one could expect their collective experience to result in a loss ratio between 200% and 300%. In other words, they will receive a financial benefit from the plan that is 2 or 3 times the cost of the coverage. Financially, this would certainly seem to discriminate in favor of these groups, not against them. And the collective group of employers in the lowest cost pool would be expected to maintain loss ratios in the range of 60-80%.

Given that the breakeven loss ratio of a well-run AHP would be in the range of 85-90%, there will be heavy cross-subsidization of groups with a poor health profile by those with a good health profile, even under a tiered rating structure. Without a tiered structure, there would be substantially greater cross-subsidization – that is, until the groups with better risk profiles vote with their feet, leaving the groups with poor risk profiles to watch premiums skyrocket and a death spiral ensue.

There are enormous obstacles to starting and successfully operating an Association Health Plan, but without being able to at least modestly differentiate rates based on claims experience and other unique factors of each employee group, the likelihood of success is small.

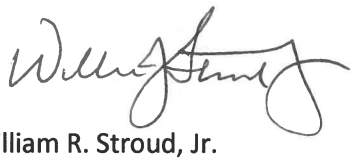
Status of Existing MEWA Association Health Plans

We concur with other submitted comments that the effort to expand coverage options through AHP's should not impact those plans operating successfully under state MEWA and federal VEBA regulations. Otherwise, there is a real risk that this effort will diminish small employer health plan options rather than expand them.

We hope that the effort to encourage AHP's will parallel rather than interfere with options already available, and that the final regulations will focus on solvency, rate sufficiency and sufficient rating flexibility to encourage a stable risk pool. Like all insurance risk-sharing arrangements, AHP's must adhere to insurance principles to succeed.

Please let us know if we can provide further information to assist you.

Best Regards,



William R. Stroud, Jr.