



2000 Marcus Avenue
New Hyde Park, NY 11042

March 6, 2018

Joe Canary, Director
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 Director Canary:

Northwell Health, Inc. (“Northwell”) submits these comments in response to the Department of Labor (“DOL”) Proposed Rule, “Definition of ‘Employer’ Under Section 3(5) of ERISA – Association Health Plans”, published in the Federal Register on January 5, 2018 (“Proposed AHP Rule”). In the preamble to the proposed regulation, the DOL also requests information as to the relative merits of exempting self-insured multiple employer welfare associations (“MEWAs”) from State insurance laws pursuant to the Employee Retirement Income Security Act (“ERISA”) section 514(b)(6)(B) (“Request for Information”). We provide comments on the Proposed AHP Rule and the Request for Information below.

Position:

Northwell Health (formerly North Shore-LIJ Health System) is committed to working within the community to facilitate access to quality health care. We believe that fostering choice and innovative plan design is the key to both. Here in New York, we have seen access to choice diminish in the small group market. Indeed, the demise of Health Republic and CareConnect has reduced the number of carriers providing any significant (over 2%) coverage to the down state small group market to approximately 3 carriers and of those, one carrier has over 75% of the market.

We support the Proposed AHP Rule as we believe it has the potential to restore meaningful choice to the downstate New York and other small group markets, by expanding the ability of multiple small employers to band together, form an Association, and either offer a single large group policy to their employees or self-insure.

In connection with Associations that do self-insure, in response to the DOL’s Request for Information, we urge the DOL to exempt self-insured MEWAs from the full scope of regulatory requirements applicable to insurance companies, retaining only the reserve requirements, for two reasons: (i) freedom from such regulation will further facilitate innovation and enhance consumer choice; and (ii) freedom from such regulation

will not endanger the consumer as the MEWAs are regulated by ERISA and will be required to maintain reserves necessary to ensure solvency.

Comments/Rationale:

Broadening the Ability to Form Small Group Associations –Increased Choice

The Proposed AHP Rule expands the definition of “employer” under ERISA which, in turn, enables small employer groups to form a single Association and sponsor a large group health plan or self-insure. This change creates flexibility for small employers by providing access to the innovative and lower cost health plans that are typically available only to large groups. This includes the use of smaller high performing networks which can reduce the overall cost of care, assure access to high quality providers, and facilitate coordination of care through, for example, care management and disease management within that network. This type of network innovation is key to disrupting the current cost plus market and is the subject of increasing interest from large corporations that wish to drive change.

Freedom from State Insurance Laws for Self-Insured MEWAs-Key to Innovation

In connection with the DOL’s Request for Information, we urge the DOL to exempt self-insured MEWAs from the full scope of regulatory requirements applicable to insurance companies, retaining only the reserve requirements.

Choice and Innovation

There is currently joint federal and state authority in regulating MEWAs. Regarding self-insured MEWAs, this has been interpreted in New York to subject such a MEWA to the full scope of the insurance laws, in essence, requiring it to obtain an insurance license and become an insurance company. (New York OGC Opinion 2006-8.) ERISA, however, provides that the DOL may grant exemptions from certain State insurance regulations to self-insured MEWAs (see 514(b)(6)(B)). We believe that such an exemption from all but the state insurance law reserve requirements is essential.

Requiring self-insured MEWAs to obtain an insurance license and operate as an insurance company is extremely burdensome, not to mention being an unnecessary financial encumbrance above and beyond the need to hold reserves. This requirement is, as a result, a barrier to entry that will prevent the formation of self-insured MEWAs. This will, in turn, prevent the access of small businesses to choice and innovative benefit plan designs that they could experience should self-insured MEWAs be permitted to function as large self-funded groups which typically have greater flexibility in plan design as well as lower costs.

Consumer Protections Already Exist

Eliminating the requirement that the self-insured MEWA become an insurance company should not endanger consumers provided that the reserve requirements are maintained. These requirements will ensure that the MEWA maintains funds that are adequate for solvency thereby protecting the small group members from any potential failure to pay claims. In addition, the MEWAs that are employee welfare benefit plans are already regulated by ERISA and, as such, are subject to ERISA requirements designed to protect plan participants. These include reporting and disclosure requirements, fiduciary responsibilities, administration and enforcement provisions,

continuation of coverage, and benefit mandates. Under ERISA, self-insured MEWAs' employee benefit plans, or their plan administrator, must provide plan participants with summary plan descriptions, file annual reports with the DOL, adhere to claims processing and appeal procedures, afford COBRA, and comply with federal laws, *e.g.* HIPAA, Mental Health Parity, WHCRA, GINA and ACA. MEWAs are required to register with the DOL prior to operating in a state.

Finally, as an extra protection, we note that the insurance laws would continue to apply to certain of the vendors that a MEWA might employ, for example, a third party administrator ("TPA") engaged by the self-insured MEWA to process claims and administer the employee benefit plan. A TPA would remain subject to state insurance laws and licensure requirements governing TPAs, as well as the relevant laws applicable to claims processing and utilization review activity.

Within this regulatory context, it seems unnecessary to also require the MEWA itself to hold an insurance license, and comply with the full range of state insurance law and regulation.

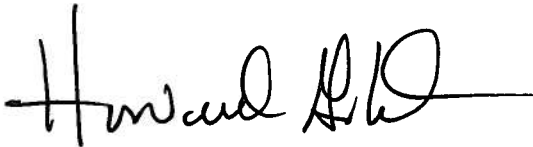
Conclusion:

In sum, we support the Proposed AHP Rule's efforts to expand the ability of small employer groups to form Associations and either purchase large group coverage or self-insure as a means of providing greater access to innovative and high quality health care.

In addition, we urge the DOL to exempt self-insured MEWAs from the full scope of state insurance requirements in order to facilitate the creation of alternative and affordable health plan options for small employers.

We appreciate the opportunity to provide comments. Please do not hesitate to contact me with any questions.

Sincerely,



Howard B. Gold
Executive Vice President
Chief Managed Care Business Development Officer
Northwell Health

cc: Michael Dowling
Richard Miller
Mark Solazzo
Laurence Kraemer
Kathryn Howell
Emily Leish