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Jeanne Klinefelter Wilson, Deputy Assistant Secretary
Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue N.W.
Washington, D.C. 20210

Attention: Definition of Employer—Small Business Health Plans RIN 1210-AB85

Dear Ms. Wilson:

Thank you for the opportunity to comment on the proposed regulation, “Definition of ‘Employer’ Under Section 3(5) of ERISA-Association Health Plans” (83 Fed. Reg. 614 (Jan. 5, 2018) (AHP Proposed Rule)), which expands the criteria under ERISA for determining when employers may join together in an association that is treated as the ERISA “employer” of a single, multiple employer group health plan. Wisconsin applauds the US Department of Labor (DOL) for taking proactive measures to broaden health insurance options for small employers and sole proprietors, while maintaining an eye towards the importance of state regulation. DOL’s work to improve the market through increased flexibility allows for innovative, market-driven solutions, and comes at a critical time when small employers/sole proprietors are taking a hard look at whether they can afford to retain health insurance benefits.

Wisconsin stands ready to work with DOL and take full advantage of the flexibility offered through the AHP Proposed Rule to ensure greater coverage options for Wisconsin small employers/sole proprietors. We have long communicated to the federal government that the rigid, one size fits all structure of the Affordable Care Act (ACA) does not work in every state and does not allow for innovation in meeting consumer (employer/employee) needs. States need latitude to allow small employers to pool together as a means to leverage more generous and affordable benefit packages for their employees. This is as much about affordable access to coverage as it is about allowing small employers to remain competitive; i.e. by not being forced to forgo the benefit packages employees seek when choosing between employment opportunities. Wisconsin has numerous small employers and sole proprietors in this state and we want to do everything possible to ensure access to health insurance coverage is not a negative factor in their ability to thrive and remain competitive. The AHP proposed rule is a significant step in that direction.

As DOL continues to accept comments and refine the proposed regulation, Wisconsin asks that you continue to ensure state regulation is not pre-empted by federal law and flexibility offered by the final regulation is counter balanced by a state's ability to protect against unfair and deceptive trade practices. States remain in the best position to closely monitor what is happening in their insurance markets and have the tools in place to respond.

Thank you again for the opportunity to comment.

Sincerely,



SCOTT WALKER
Governor

