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Congress of the United States
House of Representatives
Washington, DC 20515-4303

March 5, 2018

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The Honorable Alexander Acosta
Secretary
U.S. Department of Labor
200 Constitution Ave., NW
Washington, D.C. 20010

Dear Secretary Acosta:

Thank you for your leadership at the Department of Labor (DOL). I write today regarding the January 5, 2018 Notice of Proposed Rulemaking to expand access to healthcare through Association Health Plans (AHPs). I applaud you for taking this action. As you may know I have long championed AHPs, and have sponsored legislation that passed the House of Representatives on three separate occasions (most recently, H.R. 1101 passed the House on March 22, 2017). AHPs are one important way to increase access to quality health coverage for American families.

As DOL crafts its final rule on AHPs, I would like to raise the issue of franchisee employees. As you know, the long standing definition of a joint employer had been defined as one exercising direct and immediate control over the essential terms of another entity's employees. However, the legal test used to determine joint employment status has become somewhat vague, and therefore could give employers pause in deciding whether to offer their employees health coverage through an AHP due to the fear of litigation. Specifically, the concern is that franchisors could be improperly held liable for the actions of franchisees through an AHP. As you know, franchisees have direct and immediate control over employment decisions, versus the passive role of the franchisor. Therefore, I would ask you and the Department to thoughtfully consider these issues when preparing the final rule on AHPs. This will help to ensure that AHPs can effectively increase access to affordable, quality healthcare for as many Americans as possible.

Again, thank you for your time and leadership. Please feel free to contact me if you have any questions.

Sincerely,



Sam Johnson
Member of Congress