

March 2, 2018

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

Re: Definition of "Employer" Under Section 3(5) of ERISA – Association Health Plans
RIN 1210-AB85

Dear Sir or Madam:

On January 5, 2018, the Department of Labor's Employee Benefits Security Administration (EBSA) published a request for comment on the captioned Rule which proposes to expand the definition of "employer" under ERISA Section 3(5) by re-defining the criteria through which employers may join together to sponsor a group employee welfare benefit plan.

MedBen is a group health insurance company and third-party administrator (TPA) which has provided group health plan administrative services, education, and support for employers and their health benefit plans in Ohio and across the Midwest since 1938. Over that time, we have worked closely with employers as they strive to offer the highest quality health benefits to their employees in the most cost-effective manner. ERISA, since its passage in 1974, has continually protected employees while providing employers with the ability to flexibly respond to changing markets and employee needs.

To that end, MedBen supports the intentions of the Proposed Rule as it seeks to expand access to affordable coverage for small employers and sole-proprietors. However, as an entity with experience with both fully-insured and self-funded health plans, we caution against too broadly implementing these changes or implementing them without concurrently adopting specific Tri-Agency regulatory guidance. Specifically, we believe that the following should be more definitively addressed:

- 1) Current state laws and regulations apply differently to fully-insured and self-funded employers both within and between states. The proposed changes to ERISA, and the application of such to the Affordable Care Act, must be considered carefully – particularly as they affect the Proposed Rules non-discrimination provisions.
- 2) In addition, employer size and corporate distinctions must be addressed. Creating the opportunity for more small employers, and now sole proprietors, to form or join association health plans is a positive and important step but the Proposed Rules must recognize that state association health plan and multiple employer welfare arrangement (MEWA) regulations may complicate the idea of broadening the availability of affiliation. The Proposed Rules should offer solutions to duplicative or contradictory state regulations – particularly given the broadened concept of association by geography and "cross state lines" insurance.
- 3) The financial solvency of these associations must also be specifically addressed. Over the past few years we have worked with groups of employers in two separate states who have

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attempted to form MEWAs. Both failed to get started because the financial responsibility for the organization was not established at the outset. Some state regulations are specific as to financial requirements and others are not. In an effort to see Association Health Plans thrive as anticipated by the Proposed Rules, clear guidance should be set as to an AHP's financial viability.

Employers are faced with many challenges when it comes to offering employee health benefits in the post-Affordable Care Act world. Despite this, most still believe it is important to offer comprehensive health benefits to their employees. We believe that with a small amount of targeted, clarifying guidance, the Proposed Rules will provide a positive solution for a significant issue – providing a mechanism by which small employers and sole proprietors, currently with few options for coverage, can provide health care benefits to their employees.

Respectfully submitted,
Medical Benefits Mutual Life Insurance Co.
Medical Benefits Administrators, Inc.

A handwritten signature in black ink, appearing to read 'CFR', with a long horizontal line extending to the right.

Caroline F. R. Fraker, CEBS, HIA
Vice President, Compliance & CPO