



March 6, 2018

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

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

Dear Secretary Acosta:

Thank you for the opportunity to provide comments on the Department of Labor's (DOL) proposed rulemaking, "*Definition of 'Employer' Under Section 3(5) of ERISA- Association Health Plans (Proposed Rule)*." As a state-based Exchange, Mnsure administers Minnesota's health insurance marketplace, providing access to coverage and care for hundreds of thousands of Minnesotans.

In Minnesota, Mnsure recently had our best open enrollment ever. This year, sixty percent of Mnsure's enrollees qualified for tax credits, which saved qualifying households an average of \$7,000. This has a huge impact on Minnesota families and allows them to secure their health and financial well-being.

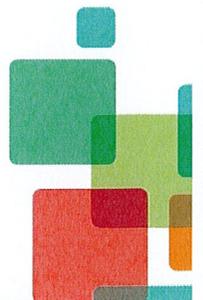
Yet, around sixty percent of Minnesotans who purchase health insurance in the individual market do not qualify for tax subsidies. These individuals are on the wrong side of the premium cliff, meaning those people whose income is above 400 percent of Federal Poverty Level (FPL) and/or who don't qualify for subsidies.

This premium cliff hurts families. We travel across Minnesota speaking to our consumers, and we've heard dozens of stories of families whose income is over the premium cliff having to choose between paying for health insurance premiums and paying for medical care – because they cannot afford both.

We agree with you that we urgently need to act to remedy this problem. Executive Order 13813 says, "...larger pools of insurable individuals ... can spread risk and administrative costs;" and the Proposed Rule says, "large group plans in and of themselves constitute large and potentially stable risk pools...." And yet, the result of expanding association health plans (AHPs) seems to contradict these principles as the effect would be the exact opposite by shrinking the individual market.

Expanding AHPs will create a steeper premium cliff in the individual market and split Americans into ever smaller and more vulnerable coverage groupings. Further segregating the individual market in this way could result in drawing out the healthier risk into AHPs, leaving individuals with the immediate need for quality, comprehensive coverage in the individual market, forced to pay higher premiums. Meanwhile, healthy Americans who purchase AHPs will be exposed to the risk of one bad accident or diagnosis leading to financial ruin. Ultimately this will leave the most vulnerable consumers more vulnerable by exacerbating the premium cliff and providing inadequate coverage to others.

We urge you not to implement policies that segment the individual market, increasing the risk of financial ruin for those who are lured into purchasing inadequate coverage while increasing premiums for everyone





else. Continue to let states regulate group insurance plans. Stabilize the markets and empower consumers through less risky alternatives that do not leave behind consumers in the individual market.

Minnesota implemented a reinsurance program for plan years 2018 and 2019, lowering premiums by as much as twenty percent in 2018. Yet, Minnesota's reinsurance program is only a short term Band-Aid. Our consumers need long-term actions that will mitigate or eliminate the premium cliff and that ensure that everyone can access affordable, quality coverage. A long-term, comprehensive, federally-funded reinsurance program would ensure consumers have access to affordable quality coverage. We have consistently urged Congress to act on a reinsurance program that will strengthen, stabilize, and unite the individual market. At a minimum, consider allowing Congress time to act on reinsurance before taking drastic and risky measures like AHPs.

While we have grave overarching concerns about the stability of the individual market and the direct harm to thousands of Minnesotans caused by the changes at the heart of this Proposed Rule, we also have specific concerns about particular provisions of this proposed rule and the way they will be enforced.

Preemption. We strongly oppose any rule that exempts AHPs from state regulation. Unfortunately, there remains too much uncertainty about the interaction between federal and state law for states to actively and meaningfully engage in analysis of the Proposed Rule. It is not clear whether the Proposed Rule would preempt existing state law. It is similarly unclear if the Proposed Rule would preempt a newly enacted state law that set more stringent standards. In response to past situations of financial insolvency and fraud, Minnesota adopted comprehensive laws that regulate joint risk pools, like AHPs, to protect its citizens. To simply leave these questions to the courts is unacceptable and irresponsible.

Metropolitan areas. Minnesota has a large and sprawling metropolitan area. Additionally, several Minnesota cities share geographic overlap with cities in the state of Wisconsin. We are concerned that AHPs could manipulate geographic classifications and leave some Minnesotans purchasing coverage through AHPs without protections afforded to their fellow Minnesotans. More protective parameters are needed for metropolitan areas, for example, requiring AHPs to comply with state laws in every state in which it operates.

Nondiscrimination provisions. We appreciated the care given to the nondiscrimination provisions in the Proposed Rule, yet such a commitment to nondiscrimination is our expectation. It is also important to consider that the expected consequence of AHPs will ultimately discriminate against those individuals with disabilities and pre-existing conditions who need access to quality, comprehensive coverage, but who don't qualify for tax subsidies (the premium cliff). Those individuals with disabilities and pre-existing conditions will have to pay more as the individual market destabilizes as a result of segmenting the health care market.

Thank you again for the opportunity to provide comments on the Proposed Rule, and for your consideration of our comments.

Sincerely,

A handwritten signature in blue ink that reads "Allison O'Toole".

Allison O'Toole
CEO

