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Governor of Montana
Vice Chair

Scott D. Pattison
Executive Director and CEO

March 6, 2017

The Honorable R. Alexander Acosta
Secretary of Labor
c/o Office of Regulations and Interpretations
Employee Benefits Security
U.S. Department of Labor, Room N-5655,
200 Constitution Avenue, NW, Washington, DC 20210,

Re: NGA Comments on the Proposed Rule on the Definition of “Employer” under Section 3(5) of ERISA—
Association Health Plans (RIN 1210-AB85)

Dear Mr. Secretary:

The National Governors Association (NGA) appreciates the opportunity to comment on the Department of Labor’s proposed rule. In the proposed rule, the Department seeks comments on the merits of possible state exemption approaches under ERISA section 514(b)(6)(B). The Department is seeking comment regarding how potential exemptions could promote health care consumer choice and competition and the risk such exemptions might present to appropriate regulation and oversight of Association Health Plans (AHPs), including state insurance regulation oversight functions. NGA has long expressed concern over proposals to federalize regulation and oversight of AHPs. NGA strongly urges the Department not to take any action that would preempt state regulation of health insurance markets and to explicitly clarify that the regulation does not preempt state oversight and regulatory authority.

NGA believes that governors and state regulators are best positioned to address the unique dynamics of state insurance markets and that states are already protecting consumers through their regulation of AHPs. Each state insurance market faces different challenges and opportunities. States have long served as the primary regulators of insurance and have the experience and tools to address fraud, abuse and insolvency, while working to ensure that insurance is accessible and affordable for state residents. It is critical that states have the authority to ensure that the health insurance products available to their residents meet appropriate solvency requirements and do not put consumers, providers or health insurance markets at risk.

Preemption of state regulatory authority should be the rare exception rather than the rule. This is especially true in areas of primary state responsibility, like insurance regulation. NGA urges the Department to promote a strong and cooperative state-federal relationship through this rulemaking process.

Sincerely,

Governor Charlie Baker
Chair
Health and Human Services Committee

Governor Kate Brown
Vice Chair
Health and Human Services Committee