

COMMISSIONER OF SECURITIES & INSURANCE

MATTHEW M. ROSENDALE, SR.
COMMISSIONER



OFFICE OF THE MONTANA
STATE AUDITOR

March 6, 2018

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue N.W.
Washington, DC 20212

Re: Department of Labor- Definition of "Employer" under Section 3(5) of ERISA—Association Health Plans, RIN 1210-AB85.

Dear Secretary Puzder,

The Montana Commissioner of Securities and Insurance, Office of the Montana State Auditor, supports the broadening of criteria for employers to participate in an employer group or association sponsoring a health plan.

Providing an Association Health Plan Option to small businesses and sole proprietors gives them the opportunity to further access more affordable or more tailored health insurance. Montana has a significant agricultural and small business population, and those employers and employees can benefit from expansion of their options for health coverage.

Montana is a member of the National Association of Insurance Commissioners (NAIC), and the organization is commenting on the rules as well, see their letter dated March 6, 2018. We are generally in concurrence with their comments. In particular, we reiterate that:

- "Coordination between DOL and State Insurance Departments", as continuing a cooperative relationship supporting protection of consumers
- "Exception for certain not fully insured MEWAs", as we strongly urge an affirmation that states retain authority to regulate the new Association plans; and
- "Notice Requirements" to coordinate between DOL and the states assures consumers are adequately informed of their coverage with an association.

Furthermore, we support the provisions indicated in the proposed rule in regard to satisfying the commonality requirement, i.e., in the same trade, industry, line of business or profession, same state or metropolitan area, or a smaller geographic area such as a city or county. These options will support the formation of new associations.

We also agree that states should have the ability to determine the required service areas and recommend that DOL allow the states as much flexibility as possible to determine the scope of a "region" in Section 2510.3-5 (c) (2). Each state will have different needs based on its population and markets.

Regarding "Working Owners", we believe that the DOL rule should go further. We strongly support the ability of sole proprietors or other working owners of businesses to elect to act as an employer for purposes of participation in an association and to be treated as an employee for purposes of being covered by the health plan. We also concur in the terms of section 2510.3-5 (e) (1) to (3), except (2) (iii) which states a working owner cannot be "eligible to participate in any subsidized group health plan maintained by another employer of the individual or of the spouse of the individual". Unless prohibited by other law, this should not be an impediment to participation by a working owner.

As an additional comment to section 2510.3-5 (e) (2)(iv)(A) and (B) we request the regulations include criteria that working owners in startups or businesses with years of reduced income be allowed to participate or continue participation in association coverage. This could be accomplished through a written representation submitted by the working owner of the business engaged in and include the basis for not being able to meet (A) hours worked or (B) earned income equaling cost of coverage.

We also wish to comment on premiums or contributions required for coverage under an association plan. To the extent allowable under laws applicable to the proposed Association Health Plans, and to avoid preemption of state law; Association Health Plans should not be limited by Section 2510.3-5 (d) (3) and (4). As noted in the proposed rule notice this could "discourage formation and use of AHP's", 83 FR 624.

The effective date was addressed by NAIC, however we are open to another effective date that provides the earliest opportunity to Associations to begin the processes and provide a much needed health coverage option to employers and their employees.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew M. Rosendale, Sr.", with a stylized flourish at the end.

Matthew M. Rosendale, Sr.
Montana Commissioner of Securities and Insurance