



February 20, 2024

The Honorable Julie A. Su
Acting Secretary of Labor
200 Constitution Avenue
Washington, DC 20210

RE: RIN 1210-AC16

Dear Acting Secretary Su:

I am writing on behalf of the National Association of Benefits and Insurance Professionals (NABIP), formerly known as NAHU, which is an association representing over 100,000 licensed health insurance agents, brokers, general agents, consultants and employee benefits specialists. We are pleased to have the opportunity to provide comments in support of the proposed measure to rescind the 2018 regulation titled “Definition of an Employer – Association Health Plan,” which was published in the *Federal Register* on December 20, 2023.

The members of NABIP work on a daily basis to help millions of individuals and employers purchase, administer and utilize health insurance coverage. Ensuring market stability and competition, as well as improving health coverage affordability, are among our top goals. Accordingly, NABIP supports the existence of the original track AHPs, which are regulated both federally and by the states according with multiple employer welfare arrangement rules and operate under the traditional definition of an employer as per ERISA. While this type of AHP is not the right choice for every employer, and are not easily permitted in some states due to MEWA restrictions, these AHPs do play an important role in the employer group coverage marketplaces where they exist and thrive today. NABIP is gratified that in proposing this rescission, the Department does not make any changes to the rules that would change the status of original AHPs as an option for consumers in the states where they are a fixture in the marketplace.

Regarding the 2018 AHP regulation, when it was originally proposed, our association raised concerns about the amendments to the definition of an employer for the purposes of forming a bona fide association health plan and the change to long-standing interpretations of ERISA for this purpose. We pointed out the potential for fraud, the conflicts with existing state consumer protection laws, and the likelihood that any benefits and cost savings that could be created for specific populations were likely to be small, if any. NABIP also expressed concern about the potential destabilizing impact of the proposed rule on existing state and federal-regulated AHPs. As such, we were gratified when the final regulation created two tiers of AHPs, preexisting, and those established under the newly revised rules.



In the time between the finalization of the 2018 measure and when the federal district court for the District of Columbia put a stay on large portions of the measure in 2019, our members saw how the potential for implementation of the new type of AHPs caused dissention in the marketplace, conflicts with many existing state requirements, and from many state regulators.

Our association also sees how the continued technical existence of portions of the 2018 rule over the past few years has caused confusion in the marketplace. While the preamble to this proposed rule the department is not aware of any existing AHP formed based on the 2018 measure, NABIP members can report that up until the publication of this measure, that certain bad actors in the marketplace would occasionally pitch the creation of “too good to be true” association options to prospective employers that appeared to be predicated on the partially stayed 2018 regulatory framework. Accordingly, NABIP members agree with your proposed action to rescind in full the 2018 AHP rule.

We truly appreciate the opportunity to comment on this proposed regulation, as well as your willingness to consider the viewpoints of all stakeholders. If you have any questions or need additional information, please do not hesitate to contact John Greene, senior vice president of government affairs, at jgreene@nabip.org or (202) 595-3677.

Sincerely,

John Greene
Senior Vice President of Government Affairs
National Association of Benefits and Insurance Professionals