

**Congress of the United States**  
**Washington, DC 20515**

March 6, 2018

The Honorable Alexander Acosta  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

**RE: Definition of “Employer” Under Section 3(5) of ERISA—Association Health Plans  
RIN 1210–AB85**

Dear Secretary Acosta:

We are writing regarding association health plans (“AHP”) in Washington State. We applaud the Administration for taking action to expand the benefits of AHPs to more American small businesses. Our home state of Washington is fortunate to have a robust AHP market that provides value and choice to an estimated 400,000 employees and dependents. While we share the Administration’s commitment to expanding small business’ access to AHPs, we encourage the Department to take appropriate steps to ensure that new regulations do not adversely impact AHPs that have been successfully operating.

Bipartisan legislation passed in 1995 helped create Washington State’s strong AHP market. For more than 20 years, AHPs have offered valuable coverage options for small employers seeking alternatives to costlier products available in the traditional small group market. There are currently dozens of fully-insured AHPs successfully operating across Washington, and their continued success demonstrates the demand among small businesses seeking to provide comprehensive coverage options to their employees. Importantly, these plans satisfy all state and federal benefit requirements, with some offering more generous coverage than required for ACA-compliant plans, while also offering important consumer protections like guaranteed issue and renewal of coverage.

While the Department’s proposed rule would make several important changes to expand access to AHPs, the proposal will significantly alter the successful AHP market in Washington by prohibiting AHPs from treating different employer members as distinct groups for rating purposes. This could threaten the comprehensive benefits currently available through AHPs in Washington. By removing plans’ ability to set premiums for each member employer based on the experience of their workforce and dependents, AHPs are left with fewer options to create affordable plans that can compete with products on the small group market. One of the few remaining options available to AHPs would be to reduce the comprehensive benefits they currently provide, potentially leading to a situation where employees and their dependents cannot keep the coverage that has been working for them.

The Department can avoid this outcome by modifying the regulation to permit AHPs operating prior to January 5, 2018 to continue operating as they have been. We encourage the Department to consider grandfathering these plans and allowing them to set premiums for each of their employer members using the same approaches they have used for over 20 years. A grandfathering approach would result in,

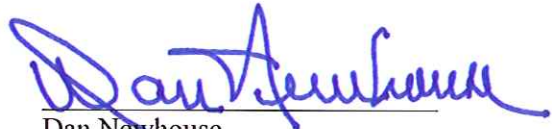
perhaps, even *more* choice for small businesses by allowing them to choose from plans in the traditional small group market, the grandfathered AHP market, and the newly expanded AHP market.

We appreciate the Department's efforts to promote access to AHPs through this rulemaking. By carefully considering the needs of existing plans successfully operating in Washington and other states, the Department can deliver on the promise of expanded coverage options for small businesses while ensuring that changes to current regulations and guidance do not adversely impact existing plans and the families they cover.

Sincerely,



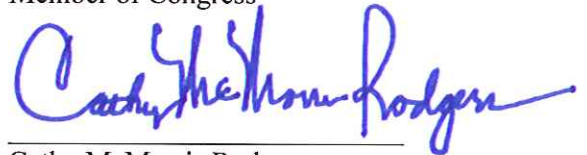
Jaime Herrera Beutler  
Member of Congress



Dan Newhouse  
Member of Congress



Dave Reichert  
Member of Congress



Cathy McMorris Rodgers  
Member of Congress

cc: The Honorable Preston Rutledge, Assistant Secretary of Labor for the Employee Benefits Security Administration