Iowa Association of
Business and Industry

April 24, 2018

Commissioner Doug Ommen
Iowa Insurance Division
601 Locust Street, 4th Floor
Des Moines, IA 50309

Re: Rule-making Related to Multiple Employer Welfare Arrangements

Dear Commissioner Ommen,

I am writing on behalf of the Iowa Association of Business and Industry (ABI) in response to the Division's request for comments regarding rule-making related to Multiple Employer Welfare Arrangements (MEWAs).

As you know, ABI is Iowa's largest statewide business organization with more than 1,500 member companies representing 330,000 working Iowans. Our members come from all 99 counties and all industry sectors, including manufacturers, retailers, insurance companies, financial institutions, publishers and printers, transportation services, law firms, health care organizations and educational institutions. Although our membership is by no means a monolith in its views, we generally applaud the Division for seeking to create new avenues for Iowa employers to obtain health coverage.

ABI supports the re-introduction of new self-funded MEWAs based on our belief that *properly regulated and maintained* MEWAs have the potential to contribute to Iowa's free market employee benefits system in a manner that can both be consumer-driven and predictable while at the same time emphasizing quality service and competitive pricing. We also believe a well-run MEWA, with simplified regulation, can help reduce and stabilize the growth of health care costs and incentivize participating employers to obtain and maintain coverage, thereby decreasing the number of uninsured Iowans. However, we are wary of the possible adverse effects of a *poorly conceived* MEWA, built with a weak foundation, inadequate reserves, or, established without the best interests of its participants in mind. **In short, we call for smart, clear, and reasonable regulations that strike a balance between providing participant and employer-member protections while at the same time allowing for flexibility to remove barriers and allow for innovation.**

On the side of stability and protections, we have a few main issues that we hope the regulations will address.

First, we are concerned about the instability of a MEWA that *does not have enough participants* or that is built around an association or collection of businesses with an *overly narrow definition of who can join the plan* (for example one that is comprised exclusively of businesses in an already small, dwindling or dying industry). Both from year to year as well as over the long term, a stable MEWA

needs enough enrollees for the past claims experience to be a reliable indicator of future risk (for example, by containing a pool of no fewer than 1,000 enrolled members, including dependents). At the same time and especially over time, it must also have a reasonable ability to *replenish those members* as circumstances evolve. Approval of a self-funded MEWA should therefore include careful analysis to make sure it is of a scale that makes sense and that has room to grow. A volatile or collapsing MEWA would be a disaster for its participants, as I'm sure you agree.

Similarly, we believe the Division should apply strong standards as to the strength and vitality of the sponsoring employer(s) or the association itself. We have concerns about MEWA sponsors that do not exhibit sound foundational principals at the time the MEWA is established. Is the association or collection of businesses in good financial health? Do they have well-thought out membership rules, adequate dues, and viable plans to assure member persistency? Does it make sense that these particular employer-members are binding together, and is there a reasonable chance of attracting the proper mix of both good and bad risk in order for it to be sustainable?

In order to protect not only the participants but also their employer-members, we suggest that the regulations require any potential MEWA Plan Administrator to provide a detailed and well considered "business plan" to outline the resources and experience of their advisors. The business plan should outline what steps they will take to assure its ongoing success, and the Division should have the authority to step in if the MEWA does not stick to game plan and principles. The business plan should establish how the MEWA proposes to manage and maintain the arrangement for the true benefit of its participants.

Second, we believe that MEWAs should be permitted (and in some cases required) to put into anti-churning measures that reduce the likelihood of employer-members hopping in and out of the MEWA (or from MEWA to MEWA) to the detriment of the remaining participants. For example, regulations should permit a MEWA to require that if an employer-member drops out it cannot then rejoin for a number of years, such as three to five. Also worth considering is the allowance of bylaws prohibiting an employer from joining the MEWA if it has been in another MEWA for less than a prescribed period of time (e.g., the employer must have participated in that other MEWA for no less than two full plan years before it is eligible to move to the new MEWA). We feel this would greatly contribute to the long-term view of those who join while simultaneously contributing to the health and stability of both MEWAs in question.

On the side of flexibility and innovation, we are particularly concerned with the current day-one cash reserves requirement equal to the greater of $500,000 and 10% of the written plan premiums, PLUS the actuarial determined amounts required by an Incurred But Not Reported (IBNR) analysis. We believe the requirement for both amounts is actuarially unnecessary and simply too restrictive, acting only to discourage the formation of new MEWAs that otherwise would be viable. Again, we suggest that an actuarial "business plan" is the best and most flexible solution for this problem.

For example, the new regulations could permit program design elements that could *partly* replace the requirement for day-one actual cash on hand. Perhaps a MEWA business plan could include that a certain percentage of day-one reserves be met with letters of credit from credit-worthy stakeholders

(i.e., promising to pay if needed but *without having to surrender the liquid cash* if not actually necessary to cover claims, as the lag between when premiums are first collected and when the first claims start coming in are generally around 45 days). Similarly, a MEWA could require its employer-members to make a per-participant "down payment" into a reserve stability fund which then *could be returned to the employer-members* once the organically produced reserves have been built up through the ongoing operation of the plan. In this example, it seems to us that as long as the "lenders" are appropriately advised of the risks, such a provision could provide the same protection yet without contributing to the already considerable hard start-up costs. As long as the MEWA is well designed and actuarially sound, such "loans" to the program would likely be repaid within two or so years, as the plan's true reserves grow and mature organically. This should provide the same protections without requiring actual cash gifts that cannot be returned.

Finally, we ask that any new regulations *only apply to newly founded MEWAs*. Let's not disturb what is working for our state's existing MEWA, association and co-op plans. As long as they are healthy and not in danger of collapse, a grandfathering-type provision should be included so that no new unnecessary regulatory burdens are placed on them.

In closing, the ABI advocates for a smart and reasonable balance between providing the necessary participant and employer-member protections while at the same time allowing flexibility to remove barriers and allow for innovation. We think striking this balance is not only possible but necessary in order for new MEWAs to succeed and thrive in Iowa for the long haul.

Thank you for your consideration of these comments. If you have any questions or if we can be of service, please do not hesitate to contact me directly.

Sincerely,

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