



October 26, 2018

– sent electronically–

Mr. Robert Wake, Chair, ERISA (B) Working Group
and Ms. Jennifer Cook, Senior Health & Life Policy Counsel
National Association of Insurance Commissioners
701 Hall of the States
444 North Capitol Street, N.W.
Washington, D.C. 20001-1509

Re: **AHIP's Comments on the ERISA Working Group's Chair's Draft October Revisions to the NAIC ERISA Handbook Draft**

Dear Mr. Wake and Ms. Cook:

AHIP offers these comments on the October draft revisions to the NAIC's (*Health and Welfare Plans Under the Employee Retirement Income Security Act: Guidelines for State and Federal Regulation*) "the ERISA Handbook".

America's Health Insurance Plans (AHIP) is the national association whose members provide insurance coverage for health care and related services. Through these offerings, we improve and protect the health and financial security of consumers, families, businesses, communities and the nation. We are committed to market-based solutions and public-private partnerships that improve affordability, value, access and well-being for consumers.

The ERISA Working Group has done great work on the recent updates to the ERISA Handbook, making it a valuable resource manual on the jurisdictional authority of states and the federal government regarding ERISA plans coverage and ERISA employer groups. We appreciate the clarifying changes made in the associations sections regarding the federal AHP rule and support the "two pathways" approach.

We have these remaining recommendations and ask for the opportunity to discuss them during the next Working Group call. Our recommendations apply to language on pages 89 and 90 of the revised draft, regarding *Rating Requirements for Association Health Plans*. We previously submitted proposed revisions on page 7 of the attachment to our September 28 comment letter – and given the changed language to the October draft, make these additional comments:

- In the last paragraph on page 89, "*Many regulators conclude that experience rating at the employer level is impermissible because it is a classification based on a health factor, contradicting the premise that the association should be treated as if it were a single large employer*":

- First, everything past the comma following “health factor” should be stricken, as no contradiction necessarily exists between those points.
 - Second, experience rating is not a classification based on a health factor, it is rating system where each group is rated entirely on the basis of its own expected claims in the coming period, with retrospective adjustments for prior periods. So that sentence reflects an assumption that doesn't hold true.
 - For those reasons, **we recommend that sentence be deleted.**
- In the last sentence of that paragraph on the top of page 90, “*Insurers that seek to apply experience rating have responded that it is a bona fide employment-based classification.*” should be deleted. It's not accurate, and we had previously recommended it be removed.
 - **We again recommend that language be deleted.**
 - Finally, in the last sentence of the first full paragraph on page 90, “*Likewise, the AHP Rule does permit experience rating at the occupation or industry level*”, it would be more accurate to strike the word “experience”, so it reads “rating at the occupation or industry level is permissible”. That change also harmonizes with the title of that subsection.
 - **We recommend deleting the word “experience” in that sentence.**

Thank you for the work you have done on the manual, and for consideration of these comments.

Sincerely,



Candy Gallaher, Senior Advisor – Policy and Government Affairs

America's Health Insurance Plans

cgallaher@ahip.org