



Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc
2101 East Jefferson Street
Rockville, Maryland 20852

August 9, 2024

David Cooney
Associate Commissioner of Life and Health
Maryland Insurance Administration
200 St. Paul Street, Suite 2700
Baltimore, Maryland 21201

RE: Study on Professional Employer Organizations

Dear Associate Commissioner Cooney:

Kaiser Permanente respectfully opposes the proposal outlined in HB 827, to exempt professional employer organizations from small group requirements.

Kaiser Permanente is the largest private integrated health care delivery system in the United States, delivering health care to over 12 million members in eight states and the District of Columbia.¹ Kaiser Permanente of the Mid-Atlantic States, which operates in Maryland, provides and coordinates complete health care services for over 825,000 members. In Maryland, we deliver care to approximately 475,000 members.

PEOs are entities that sell administrative services to small businesses, including HR services, payroll, tax administration, and benefits administration. PEOs are primarily regulated at the state level. While many PEOs provide important services, there is a history of fraud and abuse in this industry where PEOs have exploited loopholes or acted fraudulently. National PEO organizations are pursuing legislation like this to exempt themselves from the Affordable Care Act consumer protections. Kaiser Permanente has the following concerns, which were shared by several stakeholders at the July 24 listening session:

- **PEO exemption opens the door to market destabilization.** If PEOs are exempted from small group requirements, they can cherry pick the healthiest businesses and people to cover, while leaving older and sicker people and small businesses in certain industries to rely on the ACA regulated markets. This practice will destabilize state regulated small group (small business) and individual private health insurance markets.
- **PEO exemption opens the door to inadequate coverage and discrimination.** ACA protections, including coverage for essential health benefits (EHB), rate reforms, guaranteed issue, and single-risk pool requirements would not apply if PEOs are exempted from the small group market health insurance standards. Requirements to cover

¹ Kaiser Permanente comprises Kaiser Foundation Health Plan, Inc., the nation's largest not-for-profit health plan, and its health plan subsidiaries outside California and Hawaii; the not-for-profit Kaiser Foundation Hospitals, which operates 39 hospitals and over 650 other clinical facilities; and the Permanente Medical Groups, self-governed physician group practices that exclusively contract with Kaiser Foundation Health Plan and its health plan subsidiaries to meet the health needs of Kaiser Permanente's members.

maternity and other essential benefits also would not apply. In addition, they could discriminate in rates, charging women higher rates than men, charging smaller businesses higher rates, charging businesses in certain industries higher rates, and charging older people higher rates without limit.

- **PEO exemption opens the door to fraud and abuse.** There is a history of PEOs collecting health insurance premiums and not paying claims, collecting workers' comp premiums and not buying insurance, and collecting payroll taxes and not paying the IRS. Exempting PEOs from state oversight and enforcement provisions increases the risks of scams and fraud. Examples include:
 - Health Insurance Scam: operators of a PEO used premiums to buy boats instead of paying claims. The PEO left workers and their families with over \$3.6 million in unpaid medical claims. One of the PEO's operators had previously been sentenced to six years in federal prison for tax and health care fraud operating another PEO.²
 - Worker's Compensation Scam: operators of a nationwide PEO scam collected \$5.8 million in premiums but did not pay for the promised worker's compensation insurance for 33,000 people.^{3 4}
 - Payroll Scam: the CEO of a PEO was sentenced to 70 months in prison and three years of supervised release and ordered to pay more than 29 million dollars in restitution to the IRS. In this case the PEO used the payroll funds collected from its customers to pay company and personal expenses of its operators instead of paying the IRS.⁵

Maryland policymakers have a strong history of protecting consumers and ensuring stable and competitive private health insurance markets for Maryland small businesses and their workers – and rejecting legislation that would allow certain organizations to exempt themselves from ACA protections. Accordingly, we urge the MIA to recommend against passage of legislation like HB 827 in 2025.

Thank you for the opportunity to comment. Please feel free to contact me at Allison.W.Taylor@kp.org or (919) 818-3285 with questions.

² US Labor Department Sues Florida Outsourcing Company, Fiduciaries, Service Providers To Restore \$1.5 Million to Health, Welfare Arrangement, Aug. 11, 2016, available at <https://www.dol.gov/newsroom/releases/ebsa/ebsa20160825-0>. Federal Agents Seize HB Resident's Boat, Car, The Islander, available at <https://www.islander.org/2012/12/federal-agents-seize-hb-residents-boat-cars>.

³ Fla. Workers' Comp Fraud Results in 14 Year Prison Sentence, Insurance Journal, May 21, 2007, available at <https://www.insurancejournal.com/news/southeast/2007/05/21/79853.htm>

⁴ Twenty-Seven Victims of Fraud Scheme to Receive Restitution Totaling \$2.9 Million, U.S. Atty Office Middle District of Florida, June 02, 2009, <https://archives.fbi.gov/archives/jacksonville/press-releases/2009/ja060209.htm>

⁵ Treasury Inspector General for Tax Administration Report, Page 8. The U.S. Congress had to pass legislation to address tax fraud in the PEO industry. The law required the Internal Revenue Service (IRS) to create a voluntary certification process for PEOs.⁴ According to the US Treasury Office of Inspector General for Tax Administration, tax fraud continues to be an issue in the PEO industry.

Kaiser Permanente
Comments for PEO study
August 9, 2024

Sincerely,



Allison Taylor
Director of Government Relations
Kaiser Permanente



Rory Murray
Principal
Providence Strategies