NAIFA Comment Letter

to the

Maryland Insurance Administration

for

Professional Employer Organizations Study

The National Association of Insurance and Financial Advisors – Maryland Chapter ("NAIFA-MD") appreciates the opportunity to submit written comments to the Maryland Insurance Administration ("MIA") pertaining to the study on Professional Employer Organizations ("PEOs") as required by HB827/SB821 of the 2024 legislative session of the Maryland General Assembly. NAIFA-MD is made up of insurance agents and advisors, financial advisors and financial planners, investment advisors, broker/dealers, multiline agents, health insurance and employee benefits specialists, and more. We are the closest to the consumer and provide products, services, and guidance that increase financial literacy in our society, protect their clients against life's inherent risks, help hard-working Americans prepare for retirement, and create financial security and prosperity so their clients can leave a legacy for future generations.

In keeping with our oral comments at the public meeting held on July 24th, NAIFA-MD urges the MIA to proceed with caution in recommending to the legislature, policy options pertaining to allowing PEOs to offer health insurance products to Maryland businesses, especially small businesses with 2-50 employees. The theme of our concerns is that of transparency.

Price Transparency

PEOs act as co-employers with businesses offering a wide range of products and services from payroll to workers compensation insurance as well as 401K plans and health insurance. It has been our members' experience that PEOs do not itemize the cost for each of the services as they are bundled into one bottom line number. During the public comment period, we were told that many PEOs do itemize the expenses. Like any other business, not all PEOs are created equally nor operated in the same way, but proper oversight raise the bar to entry in the name of consumer protection.

Our main ask is that if legislation and/or regulations are passed, they need to mandate that PEOs itemize each service/product offering so the consumer/business knows what it is paying for. We believe this is an important consumer protection.

Contract Transparency

As stated above, when a PEO signs up a new business client, the services are bundled. With bundling, the business is presented with one contract to sign for all the services included in the offering. Adding health insurance into the bundled package brings on a whole new level of complexity for the small business and ultimately the end consumer/employee. NAIFA-MD's health producer members help businesses navigate the complexities and provide tailored solutions for the health insurance needs to the employees of the business.

When a business has been offered a bundled package by a PEO and it is shown the bottom line, non-itemized, offer it is very tempting to move forward because of overall cost savings. The problems arise later when the small business realizes they are not receiving the same level of service provided by their health insurance producer when needs arise. At that time, the small business realizes that it cannot easily unbundle the health insurance component and they are stuck.

NAIFA-MD believes the MIA should recommend stringent disclosures required to be given by the PEO to the small business. This is already required with many other lines of insurance offerings in the name of strong consumer protection. Each of us has dealt with the challenges of unbundling services for cable, phone, internet, as well as in other situations and robust disclosure requirements would be needed.

Benefit Transparency

In many cases, PEOs offer health coverages that are self-funded plans. The concern here is that they can skirt around some of the ACA and MD Small Group protections for groups under 50 employees. We think the benefits provided in a health plan offering need to be clearly disclosed so small businesses know exactly what they are buying.

How is Maryland's Small Group Health Insurance Market Unique?

During the public meeting, the MIA asked each speaker how Maryland's small group health insurance market was unique to that of other states which already allow health insurance offerings through a PEO. First and foremost, Maryland has been a leader in healthcare reform in the small group market. Many of the provisions implemented by the Affordable Care Act were in place in Maryland years before its enactment.

More specifically, the MD health care reform bill enacted in 1993 and implemented in July 1994 allowed small employers to have guaranteed rates for employers with 2-50 employees. As the MIA knows, the legislation created a guaranteed issue environment and allowed carriers to submit rates in age band rate structures for companies which had a certain calculation of their overall employees and the carriers provided guaranteed premiums within these age bands.

The small group at the height of the enrollment had over 500,000 insured lives in the small group market. It was a healthy risk pool and rate increases were moderate during those years with over 25 carriers in the market which created competitive, robust choices of carriers and plans.

Over the years, consolidation occurred and only four carriers are still in the fully insured guaranteed market (Aetna, CareFirst, United Healthcare and Kaiser). Now it is down to approximately 250,000 lives, in large part due to competition with individual plans on the exchange. Increases have ranged from about 5%-12% annually in the most recent years. The concern within NAIFA membership is that these carriers will not be able to sustain competitive rate increases with such a small pool of insured lives. PEO's pulling the healthy companies' employees out of the market will cause extreme pressure on this pool of MD small group fully insured lives.

Maryland's ability to provide a competitive marketplace outside of the MBHE has contributed to better cost stability by supporting competition. Employers, having the ability to analyze their health care (employee benefits) costs each year, in contrast to the non-transparency of a PEO, affords employers the capability to shop coverage and encourages competition among the remaining carriers. The problem is that PEOs, overall, do not provide employers a way to determine their specific costs for each benefit offering. This does not allow the small employer, nor their insurance advisors, to review coverage and compare costs.

Maryland is different than most states, in that, because we had and maintained a strong private small group market through the height of its group insurance reform process, the State has an opportunity to maintain it. Maryland, even though the private small group marketplace has been reduced, is still a viable competitive environment. Whereas most other states do not have the opportunity to give employers the choice of a private market, Maryland does. We need to move cautiously when introducing changes that could further reduce competition.

Conclusion

NAIFA-MD is concerned that furthering the reach of PEOs without addressing these transparency issues will add significantly to the continuing erosion of the private small group marketplace. It will reduce group insurance competition, not add to it, if not done properly.

The practice of "non-transparency" of PEOs will likely speed up the narrowing down of the field of competition. Without needed data to compare specific costs and benefit offerings, employers can't make cost/benefit decisions. The ability to make these decisions specific to their employee benefits and costs, doesn't drive out competition but rather provides the consumer the best information from the best players in the market. Competition is a critical component for price efficiency.