

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

STATE OF NEW YORK,
COMMONWEALTH OF
MASSACHUSETTS, DISTRICT OF
COLUMBIA, STATE OF
CALIFORNIA, STATE OF
DELAWARE, COMMONWEALTH
OF KENTUCKY, STATE OF
MARYLAND, STATE OF NEW
JERSEY, STATE OF OREGON,
COMMONWEALTH OF
PENNSYLVANIA,
COMMONWEALTH OF VIRGINIA,
and STATE OF WASHINGTON,

Plaintiffs,

v.

U.S. DEPARTMENT OF LABOR; R.
ALEXANDER ACOSTA, in his
official capacity as Secretary of the
U.S. Department of Labor, and
UNITED STATES OF AMERICA,

Defendants.

Civ. Action No. 18-1747-JDB

**DECLARATION OF TRINIDAD NAVARRO, DELAWARE INSURANCE
COMMISSIONER, IN SUPPORT OF PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

I, Trinidad Navarro, declare and say as follows:

1. I am the elected Insurance Commissioner for the State of Delaware. I have served in this capacity since January 3, 2017. The facts stated herein are of my own personal knowledge or are based on information and belief. If called, I could and would competently testify to them.
2. As the elected Insurance Commissioner for the State of Delaware, I oversee the Delaware Department of Insurance (the "DDOI"). The DDOI is responsible for, among other things, enforcing state laws relative to insurance, licensing insurance companies and producers,


reviewing and approving rates and forms, monitoring the financial solvency of licensed entities and, when necessary, instituting delinquency proceedings against financially impaired or insolvent insurance companies.

3. In Delaware, the Affordable Care Act (the “ACA”) has been instrumental in improving quality and access to health care for small employers and individuals.
4. Delaware’s uninsured population has decreased from 9.1% in 2013 to 5.7% in 2016. In 2018, approximately 24,500 Delawareans enrolled in the ACA marketplace and obtained coverage containing the ACA’s comprehensive benefits.
5. I am familiar with the new Final Rule issued by the Department of Labor that reinterprets ERISA’s definition of employer (the “Final Rule”). I anticipate the Final Rule having an adverse impact on Delaware’s individual and small group markets.
6. As a result of the Final Rule, I expect to see (a) an increase in the marketing and promotion of association health plans (“AHPs”) that fail to comply with Delaware’s insurance laws, (b) a decrease in the enrollment, and corresponding increase in premiums, in the individual and small group markets in Delaware, and (c) financial harm to individuals who may lose eligibility for the ACA’s tax credit should their small employer opt to provide minimal essential coverage (which is less comprehensive than ACA’s essential health benefits) through an AHP.
7. I anticipate a substantial increase in the presence of AHPs marketing in Delaware. Since the Final Rule has been issued, the DDOI has received multiple inquiries seeking information regarding the formation and licensing requirements of AHPs.
8. As a result of the Final Rule, I anticipate market disruption in the individual and small group markets. Delaware’s individual market enrollment decreased 11% from 2017 to 2018, which we attribute partly to the uncertain and confusing messages at the federal level regarding the ACA. The Final Rule may result in additional decreased enrollment as healthier “working owners” or smaller employers seek less expensive plans with inferior coverage offered through AHPs. With the exit of healthier individuals from the market, leaving an unhealthier risk pool, I consequently anticipate insurance companies seeking future premium increases to compensate for the additional healthcare costs attendant with insuring such an unhealthier risk pool.
9. The small groups and individuals who leave the individual and small group markets in Delaware will have inferior coverage than had they purchased coverage through the individual and small group markets. AHPs taking advantage of the Final Rule likely will not offer the essential health benefits required of small group and individual policies in

Delaware. This will leave AHP plan members at risk for unanticipated health care costs in the event their less-than-comprehensive coverage fails to cover a suffered injury or illness.

10. The Final Rule will also result in direct financial harm to Delaware. In Delaware, insurance companies are required to pay an annual premium tax based on their net premium income. An increase of coverage through self-insured AHPs, made possible through the Final Rule, will result in a decrease in insurance companies' premium income and, therefore, a decrease in the amount of premium tax collected by the State.
11. In addition to the loss of premium tax revenue, I anticipate having to use additional State resources for the policing of, and enforcement actions taken against, AHPs. DDOI staff members have already had to reassign and reprioritize assignments in order to prepare the DDOI for the September 1, 2018 effective date of the Final Rule for fully-insured AHPs. In addition, following the effective date of Final Rule, I anticipate a 35% increase in work for current DDOI staff specifically related to the licensing, oversight and enforcement actions for AHPs. If AHP activity does increase substantially in Delaware as a result of the Final Rule, I anticipate the DDOI may have to hire additional staff, including at least one full-time position and several part-time positions, to ensure that AHPs comply with applicable state and federal laws and regulations.
12. I also expect that the State will have to use increased resources on educational efforts to inform Delaware consumers of the potential harms in seeking coverage through an AHP. These additional enforcement and educational resources are necessary to protect small employers and individuals in Delaware. These educational efforts will be in the form of a media campaign, which I anticipate will cost the DDOI tens of thousands of dollars to produce. In addition to the financial cost of the production of a media campaign, I also estimate that a minimum of 100 hours will be spent by DDOI staff compiling the information and documentation that will be included in the media campaign. These are costs and additional workplace hours the DDOI would not have incurred if not for the Final Rule.

I declare under penalty of perjury that the foregoing is true and correct and if called as a witness, I would competently testify to the statements above.

By: 
Trinidad Navarro
Delaware Insurance Commissioner
Date: August 10, 2018