COMMITTEE ON
EDUCATION AND WORKFORCE

U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

August 13, 2026

The Honorable Keith Sonderling
Acting Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The Honorable Daniel Aronowitz
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Acting Secretary Sonderling and Assistant Secretary Aronowitz:

I write regarding the proliferation of unregulated health insurance products that threaten to make health care less affordable for millions of consumers. Specifically, I am referring to entities offering products that purport to be health insurance when they in fact create questionable employment relationships. According to a recent court filing, the United States Department of Labor (Department) has reportedly entered into settlement negotiations with two companies offering such insurance products to consumers.[1] These companies have challenged an Advisory Opinion issued by the Department in 2020,[2] which concluded that the arrangements do not constitute employee benefit plans governed by the *Employee Retirement Income Security Act*[3] (ERISA). As the Department considers its next steps, I remind you of your obligation to ensure that any action taken must be consistent with federal law, including the requirements of ERISA and the *Administrative Procedure Act* (APA).[4]

As you are aware, there have been a number of troubling reports of the proliferation of health insurance arrangements that purport to create an employment or partnership relationship between the companies offering the insurance products and enrollees.[5] These companies engage in a

---

[1] Data Mktg. P'ship, LP v. U.S. Dep't of Lab., No. 4:19-cv-00800-o, (N.D. Tex. June 18, 2026) (Joint Motion to Stay Deadlines) https://litigationtracker.law.georgetown.edu/wp-content/uploads/2023/04/Data-Marketing-Partnership_2026.06.18_JOINT-MOTION-TO-STAY.pdf.
[2] U.S. Dep't of Labor, Advisory Op. 2020-01A (Jan. 24, 2020), https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2020-01a.
[3] Pub. L. No. 93–406 (1974).
[4] Pub. L. No. 79–404 (1946).
[5] Katie Keith, *Potential Settlement In Data Marketing Partnership Could Leave More Consumers Exposed to Skimpy Coverage*, Georgetown Cetner on Health Insurance Reforms, July 30, 2026, https://chir.georgetown.edu/potential-settlement-in-data-marketing-partnership-could-leave-more-consumers-exposed-to-skimpy-coverage/.

number of tactics to establish what the Department has previously described as "sham" arrangements,[6] including: characterizing enrollees with no ownership stake as partners in the business simply because they download an app to their phone or signing enrollees up for jobs for which they perform no work and receive no compensation.[7] In some instances, the supposed employees of these companies are completely unaware of their purported employment relationship, instead believing that they had simply purchased health insurance coverage in the individual market.[8] States such as Washington[9] and Maryland[10] have taken enforcement actions against several entities offering these plans, alleging that they violate requirements of state insurance law.

By characterizing enrollment in health insurance as employment, these companies seek to be treated as self-insured, single-employer group health plans under ERISA.[11] Such characterization would mean that these plans would be exempt from critical consumer protections under the *Affordable Care Act*[12] (ACA) that apply to individual market and small group health insurance, including community rating, medical loss ratio, and the requirement to cover essential health benefits.[13] Moreover, were these arrangements treated as ERISA-governed plans, they would be exempt from state oversight and insurance solvency standards,[14] placing consumers at risk of unpaid claims and, in some cases, outright fraud. Congress has long recognized the danger in arrangements with similar characteristics, enacting legislation more than four decades ago to ensure that plans known as multiple employer welfare arrangements could not evade state and federal consumer protections.[15]

Aggressive and misleading marketing practices have contributed to the growth in these and other noncompliant health insurance plans. In 2020, the Government Accountability Office (GAO) observed widespread deceptive marketing practices by brokers selling insurance products to consumers, who are often steered to plans that do not cover preexisting conditions.[16] Recent media reports have documented similar, coordinated efforts by telemarketers whose call centers mislead consumers who think they are enrolling in comprehensive health insurance but instead

---

[6] Opening Brief for Appellants at 16, Data Mktg. P'ship, LP v. U.S. Dep't of Lab., No. 20-11179 (5th Cir. Mar. 31, 2021), http://litigationtracker.law.georgetown.edu/wp-content/uploads/2023/04/DMP_20210331_APPELLANT-BRIEF.pdf.
[7] Zachary R. Mider and Zeke Faux, *U.S. Telemarketers Use Fake Jobs to Sell Cheap Healthcare Plans*, Bloomberg, May 5, 2025, www.bloomberg.com/features/2025-health-care-plans-fake-jobs/; *see also* Letter from Alexander T. Renfro to Joseph Canary, Director, Office of Regulations and Interpretations, U.S. Dep't of Lab., Nov. 8, 2018 (rev. Feb. 28, 2019), https://affordablecareactlitigation.com/wp-content/uploads/2019/12/a-request-for-advisory-opinion.pdf.
[8] Mider and Faux, *supra* note 7.
[9] Data P'ship Group, LP, Order No. 21-0102 (State of Wash. Office of the Ins. Comm'r, Mar. 24, 2021) (Order to Cease and Desist and Imposing a Fine), https://affordablecareactlitigation.com/wp-content/uploads/2021/04/21-0102.pdf.
[10] Press Release, *Maryland Insurance Administration takes action to prevent company from selling unauthorized health plans in Maryland*, Md. Ins. Admin., https://insurance.maryland.gov/Pages/newscenter/NewsDetails.aspx?NR=2024363.
[11] 29 U.S.C. § 1002(41).
[12] Pub. L. No. 111–148 (2010).
[13] 42 U.S.C. §§ 300gg, 300gg-18, 18022.
[14] 29 U.S.C. § 1144(b).
[15] U.S. Dept. of Lab., Multiple Employer Welfare Arrangements under the Employee Retirement Income Security Act (ERISA): A Guide to Federal and State Regulation at 3, Apr. 2022, https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/publications/mewa-regulations-guide.pdf.
[16] U.S. Govt. Accountability Off., Private Health Coverage: Results of Covert Testing for Selected Offerings, GAO-20-634R, Aug. 24, 2020, http://gao.gov/products/gao-20-634r.

sign up for junk coverage under the guise of creating an employment relationship with what the consumer believed to be a traditional health insurer.[17] These aggressive and dishonest tactics have resulted in numerous consumer complaints to the U.S. Federal Trade Commission and other regulatory authorities.[18]

Since the first Trump Administration, the Department has correctly applied the law through its consistent position that a company offering health insurance to consumers while purporting to create "employment" or "partnership" relationships based on dubious justifications are not ERISA-covered employee benefit plans.[19] Specifically, the Department's 2020 Advisory Opinion closely examined the practices of one such arrangement and determined that simply sharing data through an app did not create an ERISA plan and therefore the plan was subject to state insurance regulation.[20] Additionally, in 2024, the Department took further steps to protect workers by bringing a separate enforcement action against the owners of some of the companies operating in this space—also naming the service providers owned and operated by these individuals—alleging breach of fiduciary duties through excessive fees and self-dealing.[21]

Regrettably, the Department's efforts have been subject to litigation that remains unresolved. In 2020, Judge Reed O'Connor of the U.S. District Court for the Northern District of Texas vacated the Department's 2020 Advisory Opinion.[22] His opinion was affirmed in part and remanded in part by the Fifth Circuit,[23] and Judge O'Connor has not finished reconsideration of the remanded portions of the decision. While litigation in this matter remains ongoing, the Department has indicated that it may be negotiating a settlement with the plaintiffs in this matter, alarming experts and consumer advocates who fear the Department could end its defense of its prior position.[24]

As you are aware, the Department's statutory mission is to "foster, promote, and develop the welfare of the wage earners of the United States."[25] Additionally, the Department is bound by the requirements of ERISA, the APA, and other relevant laws that govern the Department's ability to set policy through administrative actions. Any settlement or other action that is inconsistent with the Department's obligations under these laws would be an inappropriate exercise of power at the expense of consumers and state authority to regulate health insurance. I urge the Department to act accordingly in considering how and whether to move forward with any potential settlement or other actions.

---

[17] Mider and Faux, *supra* note 7.
[18] *Id.*.
[19] *See* U.S. Dept. of Lab., *supra* note 2.
[20] *Id*.
[21] Su v. Suffolk Admin. Servs., No. 3:24-cv-01512 (D.P.R. Nov. 5, 2024) (Complaint), https://litigationtracker.law.georgetown.edu/wp-content/uploads/2025/01/Su_2024.11.05_COMPLAINT.pdf
[22] Data Mktg. P'ship, LP v. U.S. Dep't of Lab., No. 4:19-CV-00800-O, (N.D. Tex, Sept. 28, 2020), https://litigationtracker.law.georgetown.edu/wp-content/uploads/2023/04/DMP_20200928_OPINION-and-ORDER.pdf.
[23] Data Mktg. P'ship, LP v. U.S. Dep't of Lab., No. 20-11179 (5th Cir., Aug. 17, 2022), https://litigationtracker.law.georgetown.edu/wp-content/uploads/2023/04/DMP_20221011_USCA-JUDGMENT_MANDATE.pdf.
[24] Keith, *supra* note 5.
[25] 29 U.S.C. § 551.

As the Department considers its next steps, I seek responses to the following questions:

1. Has the Department changed the position expressed in Advisory Opinion 2020-A01, and, if so, what legal analysis informed that change?
2. Please provide an update on the status of any settlement negotiations between the Department and Data Marketing Partnership, L.P. and L.P. Management Services.
3. Has the Department received complaints or inquiries from consumers, or concerns raised by state insurance regulators or other stakeholders, about plans sold by Data Marketing Partnership, L.P., L.P. Management Services, or similar arrangements? If so, how many complaints, inquiries, and concerns has the Department received? What steps, if any, did the Department take to respond to and resolve these complaints, inquiries, and concerns?
4. Will you preserve all records of meetings and communications between political appointees and Data Marketing Partnership, L.P. and L.P. Management Services, including names, job titles, dates, notes, memoranda, emails, and any other documents, in accordance with federal law, including the *Federal Records Act* and related regulations?[26]

Thank you in advance for your full and complete reply. Please respond to this letter no later than August 27, 2026. You may reach out to Democratic staff of the Committee on Education and Workforce with any questions at EWDOversight@mail.house.gov or 202-225-3725.

Sincerely,

ROBERT C. "BOBBY" SCOTT
Ranking Member

[26] *See e.g.,* 44 U.S.C. §§ 3101-3107 (Chapter 31, Records Management by Federal Agencies); 44 U.S.C. §§ 3301-3314 (Chapter 33, Disposal of Records); and 36 C.F.R., Chapter XII, Subchapter B (Records Management).