

CANCER LEADERSHIP COUNCIL

A PATIENT-CENTERED FORUM OF NATIONAL ADVOCACY ORGANIZATIONS
ADDRESSING PUBLIC POLICY ISSUES IN CANCER

March 6, 2018

The Honorable R. Alexander Acosta
Secretary
Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: Definition of Employer Under Section 3(5) of ERISA – Association Health Plans (RIN 1210-AB85)

Dear Secretary Acosta:

The undersigned organizations, representing cancer patients, health care professionals, and researchers, are writing to express their serious reservations regarding the proposed rule on Association Health Plans (AHPs). We are concerned that the rule, if finalized, would adversely affect cancer patients' access to adequate and affordable health insurance. For those cancer patients receiving insurance through AHPs, there is significant risk that coverage will be inadequate. For those who rely on the health care exchanges for access to small group and individual insurance plans, coverage may not be affordable due to the effects of the AHP rule on the small group and individual insurance markets.

We understand that the rule proposed by the Department of Labor is a response to the Executive Order of October 2017 that directed several departments to recommend changes to AHP and short-term, limited-duration insurance plan standards to encourage a wider range of insurance choices for consumers. The proposed rule would permit AHPs to form an association solely to provide insurance and to gain the regulatory advantages of being treated as a large group. The definition of commonality of purpose would be expanded, and employer-members of an AHP could be in the same trade, industry, line of business, or profession, or have their principal place of business in the same geographic region.

These loosely affiliated businesses, banded together as AHPs, would be exempt from many Affordable Care Act (ACA) consumer protections, including essential health benefits and premium rating rules. In addition, the lack of clarity about state authority over AHPs raises concerns that we may see the fraud and abuse in AHPs that consumers suffered in the past. Finally, the expansion of AHPs may result in more young and healthy consumers choosing those plans, leaving a sicker and older population in the ACA marketplaces facing higher premium rates.

Adequacy of Coverage

The proposed rule, by making it easier for an association to be considered a single multi-employer plan under the Employee Retirement Income Security Act of 1974 (ERISA), will result in coverage that is exempt from many ACA standards. Of significant concern to cancer patients and health care professionals is the likelihood that AHPs will include less comprehensive coverage than available in ACA plans. Past experience with AHPs suggests that some plans might choose not to cover prescription medications, among other benefit categories. A plan without prescription drug coverage would be completely inadequate for people with cancer, who depend on access to prescription medications as part of treatment that is often multi-disciplinary and includes drugs.

The result for people with cancer whose employers offer them coverage through an AHP might be coverage that is less expensive in terms of premiums but that could leave them bankrupt if they are diagnosed with cancer. The combination of lack of coverage for critical elements of cancer care and the limited cost-sharing protections could expose cancer patients to financial ruin. AHPs would not be subject to additional ACA standards, including cost-sharing limits. This means that consumers who are enrolled in AHPs would not enjoy the ACA protections on deductibles, copayments, and coinsurance. Access to comprehensive insurance coverage with cost-sharing limits established by the ACA has positively affected the rate of personal bankruptcies, but the movement toward inadequate coverage through AHPs could reverse that improvement.

In short, for people with cancer, enrollment in an AHP is accompanied by significant risk that they will not have access to adequate and affordable care.

We also note that the proposed rule may affect individuals who work for small employers who do not currently offer health coverage and who currently receive subsidies for purchase of insurance through the ACA marketplace. If in the future the AHP coverage offered to these individuals meets the standards of affordability and minimum value, the individual will no longer be permitted to receive a subsidy for purchase of ACA coverage through a marketplace.

We recommend that there be disclosure to the employee offered coverage through an AHP about the affordability and minimum value of the coverage, so the individual may pursue ACA coverage with subsidy assistance if the AHP coverage does not meet applicable standards of affordability and value.

Protections Against Discrimination

The proposed rule would prohibit discrimination between the employer-members of AHPs based on health status. This means that membership in an AHP, eligibility for benefits, benefit designs, and premiums cannot be based on a health factor. However, AHPs would be considered large groups exempt from the rating restrictions of the ACA. As a result, an AHP could charge different premiums to small groups or individuals based on age, industry, gender, or non-health factors. The AHPs would also be permitted to establish different plan designs based on a number of classifications, including occupation, part-time versus full-time status, or date of hire.

This flexibility provided to AHPs could easily translate into a situation in which patients are offered plans that exclude certain services, providers, or classes of medication. Although the plan would not technically be permitted to deny coverage on the basis of pre-existing condition, the design of the benefits might have the effect of denying treatment for the pre-existing condition.

Protection Against Fraud and Abuse

The proposed rule signals that the Department of Labor may exercise its authority to exempt certain self-insured AHPs from state insurance regulation. This would block the ability of states to require AHPs to meet state rating, insurance contract, or marketing standards. Consumers who have problems with their AHP coverage would be required to pursue complaints with the Department of Labor and not the state insurance regulator.

Although at this point DoL maintains that state authority over AHPs is not limited, it is not clear that will continue in the future. This raises significant questions about whether consumers will be protected from instances of fraud and abuse that have previously occurred in AHPs. In the past, fraudulent AHPs collected premiums for non-existent health insurance, leaving consumers without health insurance and with substantial unpaid medical bills.

The strongest option for protection of consumers would be for states to retain the authority to regulate AHPs on insurance contract, marketing, and rating questions.

Disruption of the Health Insurance Market

We are concerned that, if the proposed rule is finalized, AHPs would significantly disrupt the individual and small group markets. Small employers might be attracted by the lower premiums for the limited coverage that AHP may offer, even if that coverage is inadequate for many of their employees. Those individuals with serious health care needs, including those with cancer and others with chronic or serious and life-threatening illnesses, will require insurance adequate for their health care needs. That coverage – available to them from the ACA marketplaces – will likely be accompanied by increased premiums.

The aim of the Executive Order that prompted the proposed rule was to increase consumer choice and control health care costs. This is an admirable goal, but we believe the proposed rule will have the opposite effect for many consumers. For certain young and healthy consumers who make it through the benefit year without any health care needs, the coverage their employers provide through AHPs may be affordable and they may not have to face the inadequacies of the coverage. For those who need access to health care for chronic or serious illnesses, coverage through AHPs may be inexpensive but wholly inadequate. For those who rely on coverage through the ACA marketplaces, the cost of coverage will likely increase as the individual and small group markets serve older and sicker consumers.

We urge the Department, as it seeks to provide more affordable insurance choices to American consumers, to keep in mind the needs of cancer patients and others with serious illnesses. The cancer patients we represent rely on access to affordable and adequate health insurance coverage, and the proposed rule may undermine such access.

Sincerely,

Cancer Leadership Council

CancerCare

Cancer Support Community

Fight Colorectal Cancer

Lymphoma Research Foundation

National Coalition for Cancer Survivorship

Ovarian Cancer Research Fund Alliance

Prevent Cancer Foundation

Susan G. Komen