



AMERICAN PUBLIC HEALTH ASSOCIATION
For science. For action. For health.

March 1, 2018

U.S. Department of Labor
Office of Regulations and Interpretations, Employee Benefits Security Administration
Room N-5655
200 Constitution Avenue, NW
Washington, DC 20210

Submitted via electronically via Regulations.gov

Attention: Definition of Employer – Small Business Health Plans RIN 1210-AB85

The American Public Health Association, a diverse community of public health professionals that champions the health of all people and communities, appreciates the opportunity to provide comments in response to the proposed regulation on small business health plans. APHA strongly urges the Department of Labor not to adopt the proposed regulation, as the policy changes it would enact would harm health and increase the cost of health insurance.

By increasing access to association health plans, which would not be required to provide consumer protections of the Affordable Care Act, the proposed regulation would reduce access to care and harm the health of millions of people with pre-existing conditions.

The proposed regulation is an effort to increase access to association health plans, which are not held to the same standards for comprehensive coverage as the health insurance policies offered on the Health Insurance Marketplace. The Affordable Care Act set standards for health insurance programs for small groups and individuals. These standards prevent health insurers from charging individuals and employers higher costs based on health status, age, gender, tobacco use, and other factors. Insurance plans for large groups are not subject to these standards. The proposed regulation would treat association health plans as large groups, thereby exempting them from ACA standards for comprehensive coverage and putting the public's health at risk.

The consumer protections of the ACA, which may not be included in new association health plans, have promoted health and health equity. These consumer protections have increased access to health insurance and made it more affordable to groups who previously struggled to access insurance. According to the Commonwealth Fund, because of the ACA, 2.6 million people with pre-existing health conditions gained coverage between 2013 and 2015; this group would previously have been prevented from purchasing health insurance. An additional 9.4 million people with pre-existing conditions were able to purchase insurance without the discriminatory pricing that would have increased the cost of their coverage before the ACA.¹ The ACA is a step forward for

¹ S. A. Glied and A. Jackson. (2017). Access to Coverage and Care for People with Preexisting Conditions: How Has It Changed Under the ACA? The Commonwealth Fund, June 2017. Accessed February 15, 2018 from <http://www.commonwealthfund.org/publications/issue-briefs/2017/jun/coverage-care-preexisting-conditions-aca>
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health equity because it enables millions of individuals who previously experienced discrimination in seeking health insurance to purchase affordable coverage.

The proposed regulations would harm these gains in insurance coverage by enabling association health plans to discriminate based on age and type of industry in which potential beneficiaries work. Rather than outright prohibiting people with certain health conditions to enroll, the more flexible standards would allow association health plans to structure their benefits to exclude people with pre-existing conditions. For example, an association health plan could choose not to provide coverage of prescription medications, which would discourage people with chronic health conditions from enrolling.

The proposed regulations would cause prices in the Health Insurance Marketplace to increase and people in need to lose coverage.

The proposed regulations would increase health insurance costs for people with pre-existing conditions. The uneven playing field between health insurance offered on the Health Insurance Marketplace and association health plans creates the risk of adverse selection.² By allowing association health plans to offer less comprehensive and lower cost coverage than insurance plans sold on the Marketplace, younger, healthier people would purchase the association plans, leaving the Marketplace with a less healthy pool of beneficiaries. Faced with insuring a less healthy population, insurers in the Health Insurance Marketplace would likely increase premiums or choose not to sell policies on the Marketplace. The federal government would pay these increased premium costs in Marketplace subsidies, and individuals with incomes too high to qualify for subsidies would pay the full price of insurance. The millions of people with pre-existing conditions who purchase insurance on the Marketplace could have their health coverage at risk if the proposed regulations take effect.

In addition, the proposed regulation has the potential to bring association health plans to market that lack the ACA's 10 essential health benefits.³ Requiring these 10 categories of health care in insurance provides a floor of benefits that people purchasing health insurance can rely on to cover common health care needs. Health insurance policies without coverage for the essential health benefits leave open the possibility that a beneficiary could develop a condition that is not covered and pay high out-of-pocket costs for care or forego care altogether to due costs. The Department of Labor should not promote a policy that has the potential to decrease access to health care and make care less affordable.

² K. Bender. (2017). *Re: Markup of H.R. 1101, the Small Business Health Fairness Act of 2017*. American Academy of Actuaries. 2017. Accessed February 15, 2018 from https://www.actuary.org/files/publications/AHPs_HR1101_030817.pdf and T. Nickel et al. (2017). *Letter to U.S. House of Representatives Committee on Education and the Workforce*. National Association of Insurance Commissioners and The Center for Insurance Policy and Research. Accessed February 15, 2018 from http://www.naic.org/documents/health_archive_naic_opposes_small_business_fairness_act.pdf

³ These benefits include outpatient hospital care, emergency services, inpatient hospital care, maternity and newborn care, mental health and substance use care, prescription coverage, rehabilitative services, laboratory services, preventive and wellness care and chronic disease management, and pediatric care. See <https://www.healthcare.gov/coverage/what-marketplace-plans-cover/>

By decreasing access to health insurance for those that need it most, the proposed regulations harm public health.

For decades, APHA has supported increasing equal access to high quality health care and health coverage as a means to improve public health.⁴ The field of public health works to assure the conditions in which people can be healthy. Health insurance improves public health by creating the conditions which enable individuals to improve their own health by affordably accessing the health care system. Quality health insurance policies help people afford preventive care, primary care, and prescription medication. It also helps improve depression and self-reported health status.⁵ These services are important for public health, particularly for the millions of people with pre-existing health conditions. Decreasing access to the health system by reducing the number of people with quality, affordable health insurance will harm public health.

The Department of Labor should not enact the proposed regulations.

Decreasing the quality of health insurance coverage and increasing the probability of people with pre-existing conditions being discriminated against harms public health. APHA urges the Department of Labor not to implement the proposed regulations.

Sincerely,

A handwritten signature in black ink that reads "Georges C. Benjamin". The signature is fluid and cursive, with the first name being the most prominent.

Georges C. Benjamin, MD
Executive Director

⁴ American Public Health Association. (1970). *A National Program for Personal Health Services*. Accessed February 15, 2018 from <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/17/14/48/a-national-program-for-personal-health-services>

⁵ Sommers B, et al. (2017). "Health Insurance Coverage and Health – What the Recent Evidence Tells Us." *N Engl J Med*. 377:586-593. Accessed February 15, 2018 from <http://www.nejm.org/doi/full/10.1056/NEJMsb1706645>