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March 6, 2018

Preston Rutledge
Assistant Secretary of Labor
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Submitted electronically via <http://www.regulations.gov>

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

Dear Mr. Rutledge:

The Healthcare Association of New York State (HANYYS), on behalf of our member non-profit and public hospitals, nursing homes, home health agencies, and other healthcare providers, welcomes the opportunity to comment on the proposed rule modifying the definition of “employer” under the Employee Retirement Income Security Act (ERISA) to expand access to association health plans (AHPs).

While the proposed rule intends to expand access to affordable health coverage for small employers and self-employed individuals, we have concerns about the level of coverage these plans would provide, their impact on vulnerable populations, and their potential to disrupt the stable health insurance marketplace in New York.

HANYYS supports increasing access to affordable, high-quality coverage. However, we are concerned that AHPs would provide less comprehensive coverage than many New Yorkers currently have, and that the coverage would in fact be less robust, would have less oversight, and would be less transparent to potential purchasers.

Plans under this proposed rule would be treated as large-employer plans, and thus would not be subject to many of the Affordable Care Act’s (ACA) consumer protection and comprehensive coverage requirements, such as the essential health benefits and rating rules. We are very concerned that this will lead individuals to

to enroll unknowingly in plans that do not provide them with complete or adequate coverage. Products offered through AHPs may include high deductibles and less first-dollar coverage, which data suggest causes individuals to delay or avoid seeking care if they cannot afford the out-of-pocket costs, particularly if they fail to understand these limitations when enrolling.

We also note that, though the proposed rule includes nondiscrimination language that would preclude AHPs from discriminating against an employer or subset of employees based on a health factor, AHPs would still be allowed to set different rates and benefit packages across groups of similar individuals (e.g., full time vs. part time, length of service). As a result, an AHP could create less desirable benefit packages that may tend to discourage particular groups of people from enrolling, without explicitly discriminating against them.

We do not support this language in the proposed rule, as an AHP could set higher rates for subsets of employees who are more likely to have expensive health needs, such as for certain jobs that are riskier or more likely to be filled by older individuals, while setting lower rates for jobs more likely to be filled by younger individuals.

HANYS is concerned that AHPs would result in adverse selection in the individual and small group market.

By providing AHPs with significant freedom in plan design and not requiring them to cover the essential health benefits, we assume that AHP products will have less expensive premiums than the comprehensive coverage offered on our state-run exchange, and may attract certain patient populations that are currently well served. If healthier individuals opt out of the exchange believing they are buying comparable AHP coverage, sicker and higher-cost individuals would be left behind. We are concerned that this would cause the price of individual and small group products to increase, ultimately harming the viability of these markets.

We are also concerned that consumers could be unaware of the limited coverage that AHPs may offer. While we oppose the proposed rule as written, we would suggest that AHPs be required to inform prospective members that they are not receiving consumer protections or benefits that they would have otherwise received in the traditional state-regulated individual and small group markets.

In New York, we have a successful exchange with multiple plan options offered in each county. If AHPs are given broad flexibility in what they must cover, we expect individuals may leave the marketplaces to seek alternative coverage through AHPs that may not be comprehensive, or that limit their access to care. Most importantly, we strongly believe that unless education and disclosure about the more limited scope, regulation, and consumer protections of AHPs is made far more explicit than the proposed rule contemplates, consumers will be surprised to learn of such limitations.

HANYS is concerned about the level of oversight that will be required of AHPs, given our hospitals' current experiences with ERISA plans and the past record of AHPs.

Since this proposed rule would increase the number of health plans regulated under ERISA, states would have limited oversight of the new AHPs beyond solvency, financial, and licensure issues, and whatever consumer protections and insurance oversight may still be within state jurisdiction.

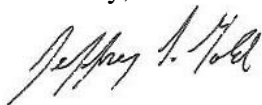
Today, there remains insufficient clarity regarding the overlay of federal and state jurisdiction in the regulation of ERISA and Medicare Advantage plans. Hospitals often face issues identifying which plans are regulated under state law versus those that fall under the jurisdiction of the U.S. Department of Labor. This is especially challenging in a state where state-regulated plans include robust consumer protections, network adequacy requirements, mandatory benefits, fraud protections, and clear appeals processes. We are concerned with the gaps in protection that will emerge for both consumers and hospitals under AHPs without state regulation.

The Department acknowledges a history of fraudulent behaviors by some AHPs in areas such as marketing, which have left both consumers and providers vulnerable to unpaid claims. While the proposed rule includes measures to prevent bad actors and acknowledges a necessity to increase the Department's capacity to monitor AHPs, we remain concerned that this is not enough. Given the past abuses that have occurred, we oppose an approach that may weaken New York State oversight over lives currently subject to New York's excellent protections.

Hospitals and health systems are committed to ensuring access to coverage and care. We recognize the Department's attention to the need to make available greater and more affordable health plan choices. However, the approach proposed in this regulation puts coverage for too many at risk. Instead of finalizing this proposal, we encourage the Department of Labor, along with the Department of Health and Human Services, to work with stakeholders on other ways to achieve these shared goals while ensuring that critical consumer protections remain in place.

HANYS appreciates the opportunity to provide feedback on the proposed rule. If you have questions regarding our comments, please contact me at (518) 431-7730 or jgold@hanys.org or Stefanie Pawluk, Director, Insurance and Managed Care, at (518) 431-7827 or spawluk@hanys.org.

Sincerely,



Jeffrey Gold
Senior Vice President, Managed Care and Special Counsel