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RIN 1210-AB85
Office of Regulations and Interpretations,
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Submitted via *Federal eRulemaking Portal*: <http://www.regulations.gov>

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

Ladies and Gentlemen:

On behalf of our 3 million members, and the 50 million students they serve, the National Education Association would like to express its grave concern about the proposed rule, Definition of “Employer” Under Section 3(5) of ERISA—Association Health Plans (AHPs).

In general, the proposed rule would allow groups of small employers and self-employed individuals to join together for the purpose of establishing and participating in AHPs. These small employers and self-employed individuals could then be considered large groups. As such, groups eligible to enroll in these AHPs would be able to skirt the consumer and patient protections that currently apply in the individual and small-group health insurance markets as included in and required by the Affordable Care Act (ACA).

It is disconcerting that AHPs would be the vehicle chosen to provide skimpy coverage to individuals and small employer groups. AHPs have a long history of fraud, abuse, mismanagement, and financial instability that have left consumers with hundreds of millions of dollars in unpaid medical and hospital bills. This long and disturbing AHP history should not be ignored. Furthermore, there is no evidence that the financial stability of AHPs would change because of this proposed rule.

NEA was a strong supporter of the consumer protection provisions for the individual and small group market included in the ACA such as the ten essential health benefit requirements, guaranteed issue, no pre-existing condition exclusions, rate reforms such as limited restrictions

on age and per-person rating, and restrictions on consumer cost sharing. The proposed rule would greatly weaken or even eliminate these protections.

The following are among the key concerns that lead us to strongly oppose AHPs:

- In order to attract healthier people/groups, an AHP would not have to provide coverage for the ten essential health benefits included in the ACA. AHPs could offer coverage without maternity benefits, mental health benefits or expensive prescription drugs, and chronically ill people needing those services would not enroll. As a result, AHPs would encourage the concentration of higher-cost patients in ACA-compliant plans, driving up their costs.
- An AHP could practice rate-setting discrimination such as charging women higher rates than men, charging smaller businesses higher rates than larger ones, charging businesses in certain industries higher rates, charging people in certain geographic locations more than others, and charging older people higher rates without limit.
- AHPs would be allowed to sell plans that had no limits on out-of-pocket costs or annual or lifetime dollar benefit limits. AHPs would cherry pick and deny coverage based on sex, age, and health factors.

This rule would establish new groups of people who would have access to AHPs but who would be under-insured and lacking crucial consumer health insurance protections. Skimpier plans would generally cost less than plans covering essential benefits and providing consumer protections. Skimpy coverage will inevitably result in increased health risk, financial distress, and possible financial ruin for working families, women, older people, and those with chronic medical needs.

Sincerely,



Dale Templeton
Director
Collective Bargaining and Member Advocacy Department