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March 6, 2018

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

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

Dear Secretary Acosta,

The March of Dimes, a unique collaboration of scientists, clinicians, parents, members of the business community, and other volunteers representing every state, the District of Columbia and Puerto Rico, appreciates this opportunity to offer comments on the proposed rule, ‘Definition of “Employer” Under Section 3(5) of ERISA– Association Health Plans’ as published in the *Federal Register* on January 5, 2018.

The March of Dimes has significant concerns about the impact that the Department’s proposed rule on association health plans (AHPs) will have on pregnant women and infants. While AHPs can offer less expensive coverage, they frequently do not adhere to important standards, including financial protections and coverage for essential health benefits (EHBs), which are critical in ensuring that pregnant women can access the care they need to have healthy pregnancies and give birth to healthy infants. AHPs are therefore already a less desirable vehicle for appropriate coverage of women, children, and families.

In the proposed rule, the Department recommends eliminating and/or altering several standards and regulatory structures that protect patients and consumers, including those related to benefit structure, cost, and oversight. We are deeply concerned that these proposed changes will make AHPs an even less adequate option for covering families. As a result, we strongly urge the Department to withdraw this proposed rule and redraft it to achieve a more appropriate balance between cost containment and patient protections.

In the event that this rule does move forward to implementation, the March of Dimes strongly encourages the Department to take the following steps to protect the health of women, children, and families:

- **Require AHPs to comply with existing EHB coverage requirements to ensure coverage adequacy.** All patients and families need the guarantee of adequate coverage for services like maternity and newborn care. Families should not be

required to plan their childbearing decisions around their insurance plan year; rather, they should have the confidence that their insurance will cover perinatal care. Given that about half of all pregnancies are unplanned, many families choose a plan in good faith not expecting to need maternity care, but find they do during the course of the year. All AHPs should be required to cover all EHB categories, including maternity and newborn care.

- **Require all AHPs to comply with protections from lifetime and annual caps and annual out-of-pocket maximums.** The costs of a complicated pregnancy could exceed an annual cap, and NICU care for an infant could easily exceed a lifetime cap. Requiring current affordability protections to remain in place for AHPs will ensure that all plans provide adequate protection against crippling out-of-pocket costs.
- **Allow the employees of businesses that choose to offer AHPs to remain eligible for premium tax credits to encourage market choice.** Given that AHPs may not meet the minimum essential coverage standard, families should be encouraged to find more appropriate coverage. Allowing them to access premium tax credits in the Marketplace could help foster competition between plans, keeping costs down and benefits packages comprehensive.
- **Require AHPs to provide clear consumer information, including details about coverage, costs, and plan policies, prior to enrollment.** Consumers have become accustomed to the coverage protections that the Affordable Care Act required. If the Department is going to allow for the sale of any plans that do not meet those requirements or for loosening of those requirements, then it should also ensure that consumers clearly understand that they are purchasing coverage with significant gaps. Full plan details must be made clear in a concise and understandable manner to all consumers before purchase.

The March of Dimes shares the Department's goal of increasing access to affordable health care coverage in the commercial market, but we are deeply concerned that this proposed rule will simply shift the cost of care from insurers to consumers. In that process, many families could find themselves with plans that fail to cover the care they need.

The March of Dimes appreciates the opportunity to offer these comments. If we may be of further assistance, please contact Brittany Johnson Hernandez, Deputy Director of Federal Affairs, at 202.659.1800.

Sincerely,



Paul E. Jarris, MD MBA
Chief Medical Officer