



**National Patient  
Advocate Foundation**

March 6, 2018

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

**Re:** Association Health Plans Proposed Rule (RIN 1210–AB85)

Dear Secretary Acosta,

National Patient Advocate Foundation (NPAF) appreciates the opportunity to comment on the proposed rule, Definition of “Employer” under Section 3(5) of ERISA – Association Health Plans (AHPs). We echo the concerns of the broader advocacy community and strongly disagree with the proposal to redefine “employer” to allow for broader adoption of AHPs. We urge you to examine the various unintended consequences to both seriously ill patients and their families as well as healthy individuals prior to finalizing the rule.

NPAF represents the voices of millions of adults, children and families coping with serious and chronic illnesses nationwide as the advocacy affiliate of Patient Advocate Foundation (PAF). PAF provides direct case management, financial support, and educational services to tens of thousands of primarily low-income patients and caregivers each year who are experiencing financial, employment, insurance coverage, or material hardships because of their health conditions. Over the last year, patients contacted PAF most frequently to address insurance (40 percent) or cost-of-living (26 percent) issues.

***Lowering Health Care Costs Continues to be a Top Priority***

Recent polling indicates that health care costs remain a high concern among the public.<sup>1</sup> Likewise, PAF case managers consistently report that patients' difficulty affording out-of-pocket costs leads to financial distress requiring safety net assistance. The top five case management issues of 2017 involved the inability to afford transportation, housing or utility expenses as well as cost-sharing assistance.<sup>2</sup> Additionally, PAF surveyed a cohort of approximately one-thousand people and found that about half (49 percent) received some sort of financial assistance in 2017 to cover their out-of-pocket expenses.<sup>3</sup> While affordability challenges may affect all patients, those in the individual and small group markets

---

<sup>1</sup> Kaiser Health Tracking Poll – February 2018: Health Care and the 2018 Midterms, Attitudes Towards Proposed Changes to Medicaid. March 1, 2018. <https://www.kff.org/health-reform/poll-finding/kaiser-health-tracking-poll-february-2018-health-care-2018-midterms-proposed-changes-to-medicaid/>

<sup>2</sup> Internal PAF Data. 2017 Patient Impact Report.

<sup>3</sup> Patient Preferences and Insurance Survey. Patients surveyed in Fall 2017.

are particularly sensitive because their population is fragmented, and smaller plans have less purchasing power to drive down costs compared to large employer-sponsored plans.

In our experience, patients are more sensitive to the monthly and upfront out-of-pocket costs to care and less often consider expenses such as annual deductibles. In fact, twenty-five percent of PAF survey respondents indicated that they did not know their annual deductible amount. Conversely, fewer than ten percent were not familiar with their monthly premiums, copayments, or coinsurance expenses.<sup>4</sup> To enable informed choices that meet people's priority needs, patients require understandable cost information and guidance about a plan's benefit design, covered treatments and services, as well as a thorough breakdown of all out-of-pocket expenses they are expected to pay. AHPs are unlikely to provide this level of transparency, however, and have historically bypassed various state standards due to lack of regulatory oversight<sup>5</sup> that could also retract important patient protection gains made over the past several years.

NPAF appreciates the Administration's efforts to lower insurance premiums for people in the individual and small group markets. We caution, however, against taking this proposed step that could negatively harm our nation's most vulnerable patients.

### ***Proposed Changes Would Disproportionately Harm People Coping with Serious, Chronic Illness***

Since passage of the ACA, patients have been largely shielded from financial distress due to discriminatory insurance practices such as health status rating rules and doing away with out-of-pocket spending caps. As proposed in the rule, AHPs would not necessarily provide the same level of quality care as those plans compliant with Affordable Care Act (ACA) rules. Therefore, AHPs could harm seriously ill patients requiring a higher utilization of healthcare services, despite the lower monthly premium costs.

Importantly, non-ACA compliant AHPs could also decline coverage for patients with pre-existing conditions and neglect to offer the ten essential health benefits. These patient protections are particularly crucial for seriously ill individuals who need access to a variety of services and treatments to manage their condition and maintain their quality of life. Without proper education and awareness about the consequences of purchasing an AHP that lacks such protections, patients may unknowingly enroll into plans that do not meet their complex needs.

Another consequence of the proposed rule could result in healthier and younger individuals leaving the individual and small group markets to gravitate towards AHPs, because they require fewer covered services. While this population would benefit financially from lower premiums offered by AHPs, they would be susceptible to financial distress should unexpected health crises arise. Additionally, the most vulnerable populations coping with costly conditions remaining in those markets would likely concentrate in high risk pools and experience higher premium rates. This shift could destabilize the

---

<sup>4</sup> *Ibid*

<sup>5</sup> Kofman, M et al. (2005). *Association Health Plans: Loss of State Oversight Means Regulatory Vacuum and More Fraud*. Georgetown University Health Policy Institute. Retrieved 8 February 2017, from <https://hpi.georgetown.edu/ahp.html>

individual and small group markets, further straining states' ability to cover the needs of their patient populations. As a result, people would be discouraged from purchasing ACA compliant plans, and fewer people would have equitable access to affordable, quality care.

***Conclusion***

NPAF believes that the proposed rule should balance plan affordability with access to insurance plans that provide comprehensive coverage, particularly valuable for patients and families coping with serious, chronic illness. We offer to partner with the Department of Labor to provide insights from patients, their caregivers and families to identify viable solutions to the health care system cost problem while protecting the lives we serve. Please contact Nicole Braccio, policy director at [Nicole.Braccio@npaf.org](mailto:Nicole.Braccio@npaf.org) if NPAF can provide further details or assistance.

Respectfully submitted,



Rebecca A. Kirch  
EVP Health Care Quality and Value  
National Patient Advocate Foundation