

February 20, 2024

The Honorable Julie Su
Acting Secretary
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: Definition of “Employer” – Association Health Plans (RIN 1210-AC16); Notice of proposed rulemaking

Dear Acting Secretary Su:

The American Kidney Fund appreciates the opportunity to provide comments on the Department of Labor’s (Department or DOL) proposed rule to rescind its 2018 rule entitled “Definition of Employer—Association Health Plans” (2018 AHP rule).

The American Kidney Fund (AKF) fights kidney disease on all fronts as the nation’s leading kidney nonprofit. AKF works on behalf of the 37 million Americans living with kidney disease, and the millions more at risk, with an unmatched scope of programs that support people wherever they are in their fight against kidney disease—from prevention through transplant. Through programs of prevention, early detection, financial support, disease management, clinical research, innovation and advocacy, no kidney organization impacts more lives than AKF. AKF is one of the nation’s top-rated nonprofits, investing 97 cents of every donated dollar in programs, and holds the highest 4-Star rating from Charity Navigator and the Platinum Seal of Transparency from GuideStar.

AKF strongly supports the Department’s proposal to rescind the 2018 AHP rule, which modified the definition of “employer” under the Employment Retirement Income Security Act of 1974 (ERISA) section 3(5). The 2018 AHP rule allowed more small business owners, their employees, sole proprietors and other self-employed people to join together and create an AHP and be treated as a large group plan, which would exempt them from certain Affordable Care Act (ACA) requirements such as providing the essential health benefits (EHBs).

In this proposed rule to rescind the 2018 AHP rule, the Department notes that after further review of the statutory language, judicial decisions, and pre-2018 rule guidance, “the Department has concluded it is appropriate to propose to rescind the regulatory provisions adopted in the 2018 AHP rule in order to ensure that guidance being provided to the regulated community is in alignment with ERISA’s text, purposes, and policies.” We commend the Department for its review, agree with its reasoning and conclusion, and urge the Department to finalize the proposal to rescind the 2018 AHP rule.

In our comment letter opposing the proposed 2018 AHP rule, we outlined our concerns that the expanded use of AHPs would undermine the availability of affordable, comprehensive health care coverage for people with chronic conditions such as kidney disease, in part because AHPs could exclude benefits and services that people with chronic diseases need access to. We also expressed concerns that the expanded use of AHPs would increase adverse selection in the individual and small group insurance markets, and increase the risk of fraud and abuse due to the well documented history of mismanagement in AHPs that has resulted in AHP insolvencies and millions of dollars in unpaid claims for policyholders and providers. We appreciate that in this proposed rule, the Department recognizes and shares those concerns, which further makes clear the need and appropriateness to rescind the 2018 AHP rule.

Thank you for the opportunity to provide comments on this proposed rule.

Sincerely,



Holly Bode
Vice President of Government Affairs