



March 6, 2018

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

RE: Association Health Plans Proposed Rule (RIN 1210-AB85)

Dear Secretary Acosta,

The following 118 patient and community organizations of the **I Am Essential** coalition are pleased to submit comments on the Department of Labor's proposed rule issued on January 5, 2018 that expands the scope and applicability of Association Health Plans (AHPs). **I Am Essential** is a broad coalition of groups representing millions of patients and their families dedicated to the advancement of quality, comprehensive, and affordable health care for patients, many of whom have serious and/or chronic health conditions. We are committed to supporting access and coverage for the healthcare needs of individuals living with chronic and serious conditions, and are concerned that the proposed rule, if finalized, would fail to provide the critical health coverage, quality health care and benefits necessary to meet the needs of patients.

In October 2017, President Trump issued an executive order instructing the Secretaries of Labor, Health and Human Services, and Treasury to make changes to existing regulations that would accommodate the administration's vision for AHPs and short-term plans as a means to promote more healthcare choices for consumers, and encourage competition in the health insurance marketplace. In response to this directive, the Department of Labor has proposed to expand the definition of an employer, allowing more small businesses and self-employed individuals to join together for the sole purpose of offering health insurance.

We believe that the proposed changes would negatively impact access to quality, affordable care for consumers, disrupt the individual and small business marketplace, and further strain the limited resources of state regulators. The loosely affiliated small businesses joined together as AHPs would be exempt from many of the consumer protections created by the Affordable Care Act (ACA), including insurance standards such as Essential Health Benefits, premium rating rules, and risk pooling. In addition, as was seen in the past with AHPs, fraud, abuse, and plan solvency present potential concerns, especially as oversight and regulatory authority remains in question.

Coverage of Health Benefits

The proposed AHPs would not have to comply with the ACA marketplace requirement of covering the ten categories of defined Essential Health Benefits. Employees would be offered less comprehensive health coverage and they may not even realize it until their healthcare needs change and the therapies, services, and providers they need are not covered. Individuals must have access to the full array of Essential Health Benefits for health insurance to be meaningful and so they can be assured that what they need, or might need in the future, will be covered.

The proposed rule would allow for plans to not cover certain prescription medications, such as those that treat mental health, HIV, hepatitis or cancer. Health status is dynamic and individuals cannot often predict what services they might need in the future. If an individual were to become ill and the services they need are not covered by their AHP, they may have to choose between seeking or forfeiting care due to the unaffordable cost of uncovered services. This can lead to beneficiaries entering financial peril due to unexpected medical costs and high healthcare bills. As a result of the ACA and increased access to comprehensive healthcare, there has been a 50 percent decline in personal bankruptcies filed between 2010 and 2016¹. We are afraid that if the proposed rule were to be finalized, this positive trend would be reversed.

It is of utmost importance that AHPs do not jeopardize enrollees' health by delivering a low premium that comes with minimal benefit coverage. Essential Health Benefits ensure enrollees have access to a meaningful scope of health benefits available should they need them.

Consumer Protections from Discriminatory Practices

Many patients represented through the **I Am Essential** coalition have first-hand experience with the harmful practices by health insurance companies such as annual or life-time limits and medical underwriting prior to the implementation of the ACA. In the past, insurers evaluated the health status, health history, and other risk factors of applicants to determine whether and under what terms to issue coverage. The proposed rule states that AHPs would offer small businesses the same relief large-employer plans have enjoyed from strict ACA and State rules, meaning an AHP could institute different membership criteria or plan benefit designs based on other classifications. Consumers enrolled in AHPs must be guaranteed protections against plans that may engage in discriminatory practices or decline coverage for beneficiaries with pre-existing conditions. Even if plans are prohibited from declining coverage to people with a pre-existing condition, issuers could preclude coverage of certain services, providers, or classes of medications if they are not required to cover all Essential Health Benefits, which would have the same effect as failing to cover individuals with a pre-existing condition. Also, an AHP could use the enrollees' health status, gender, or work industry to determine rates.

There are other consumer protections that these plans would be exempt from, such as cost-sharing limits and rating rules. AHPs would not be subject to the caps for consumers' out-of-pocket spending on deductibles, copays and coinsurance. This would perpetuate the trend of healthcare costs outpacing income increases for the average family. Consumer protections created by the ACA are critically important for making quality health care affordable, and without these protections insurers would likely resort to the practices of the past, which made healthcare unattainable to so many, particularly people with serious and complex chronic health conditions.

¹ <https://www.consumerreports.org/personal-bankruptcy/how-the-aca-drove-down-personal-bankruptcy/>

Oversight and Enforcement of Association Health Plans

It is the responsibility of federal and state regulators to assure consumers that there is sufficient oversight of insurance plans and that consumer protections are being enforced. It is questionable who will be overseeing these important functions under AHPs. The proposed rule suggests that the Department of Labor may exert regulatory force over self-insured plans, diminishing state authority to hold these issuers to specific rating, contractual, and marketing standards. This seems counterintuitive to the principle of granting states more flexibility by unnecessarily inserting a federal government presence in state operations. Furthermore, an undue burden would fall on consumers to seek assistance from a federal entity if they were to encounter an issue with their AHP.

Additionally, if plans are able to operate in multiple states, it is unclear how state law would be enforced and which state's law would take precedence. This is why insurance commissioners have long opposed the idea of selling insurance products irrespective of borders, or across state lines. In the past, AHPs became a way to sell fraudulent plans, capitalizing on confusion between state and federal regulations. As a result of the ambiguous enforcement authority, plans sold across state lines may be more susceptible to fraud and harder to protect consumers.

Impact on Health Insurance Market

If the proposed rule were to be finalized and AHPs were to flourish it would disrupt the risk pool by creating an uneven playing field through adverse selection. Small employers and self-employed individuals who are enticed by a lower premium would be drawn to AHPs and upset the risk balance that is necessary for the insurance marketplace to be sustainable. This would lead to an increase in costs-sharing and out-of-pocket costs for individuals in the ACA marketplace and who need more robust health insurance, especially those with serious and complex chronic health conditions who need robust coverage to stay alive and healthy.

I Am Essential strongly urges the Department of Labor to consider the implications of the expanded definition of employer with regards to the Employee Retirement Income Security Act (ERISA). The intent of the President's executive order was to increase consumer choice while curbing costs, however we believe that AHPs as proposed would invariably weaken the individual and small group markets leading to higher healthcare costs for all; higher premiums for those who stay in the marketplace, and high out-of-pocket costs for those who are covered by AHPs for unexpected medical needs.

We look forward to working with you and your Department as you seek to provide affordable quality health care to the American people. As you do, we urge you to keep in mind the importance of maintaining access to quality, affordable care for people who already have coverage and the critical consumer protections that are currently in place. As you pursue changes to the individual and small group marketplace, we urge you not to reverse the promise of affordable and quality care and treatment for everyone, especially people living with serious and complex chronic health conditions.

Should you have any questions or comments, please contact: Carl Schmid, Deputy Executive Director, The AIDS Institute, cschmid@theaidsinstitute.org; Beatriz Duque Long, Senior Director, Government Relations, Epilepsy Foundation, bduquelong@efa.org; or Andrew Sperling, Director of Federal Legislative Advocacy, National Alliance on Mental Illness, asperling@nami.org. Thank you very much.

Sincerely,

Action Wellness
ADAP Advocacy Association
Adult Congenital Heart Association
Advocates for Responsible Care
AIDS Action Baltimore
AIDS Alliance for Women, Infants, Children,
Youth & Families
The AIDS Institute
Allergy & Asthma Network
Alpha-1 Foundation
American Association on Health and Disability
American Kidney Fund
Arthritis Foundation
Asthma and Allergy Foundation of America
Autism Family Services of NJ
Bailey House, Inc.
Bronx Lebanon Family Practice
California Hepatitis C Task Force
Cancer Support Community
Caregivers of NJ
Celiac Disease Foundation
Center for Independence of the Disabled, NY
Chronic Disease Coalition
Community Access National Network
Consumers for Quality Care
COPE: Coalition on Positive Health
Empowerment
Easter Seals Massachusetts
EPIC Long Island
Epilepsy California
Epilepsy Foundation
Epilepsy Foundation Central & South Texas
Epilepsy Foundation Eastern PA
Epilepsy Foundation Greater Chicago
Epilepsy Foundation Greater Dayton Region
Epilepsy Foundation Heart of Wisconsin
Epilepsy Foundation Iowa
Epilepsy Foundation Metropolitan Washington
Epilepsy Foundation Middle and West
Tennessee
Epilepsy Foundation New England
Epilepsy Foundation Northwest
Epilepsy Foundation of Alabama
Epilepsy Foundation of Arizona
Epilepsy Foundation of Colorado
Epilepsy Foundation of Connecticut
Epilepsy Foundation of East Tennessee
Epilepsy Foundation of Florida

Epilepsy Foundation of Georgia
Epilepsy Foundation of Greater Los Angeles
Epilepsy Foundation of Greater Southern Illinois
Epilepsy Foundation of Hawaii
Epilepsy Foundation of Indiana
Epilepsy Foundation of Kentuckiana
Epilepsy Foundation of Long Island
Epilepsy Foundation of Maryland
Epilepsy Foundation of Michigan
Epilepsy Foundation of Minnesota
Epilepsy Foundation of Missouri & Kansas
Epilepsy Foundation of Nevada
Epilepsy Foundation of NJ
Epilepsy Foundation of North Carolina
Epilepsy Foundation of Northeastern New York,
Inc.
Epilepsy Foundation of Oklahoma
Epilepsy Foundation of Utah
Epilepsy Foundation of Vermont
Epilepsy Foundation SEWI
Epilepsy Foundation Texas
Epilepsy Information Service of Wake Forest
School of Medicine
Epilepsy-Pralid Inc.
GLMA: Health Professionals Advancing LGBT
Equality
Global Healthy Living Foundation
Global Liver Institute
HCMA
HealthyWomen
Hemophilia Association of the Capital Area
Hemophilia Federation of America
Hypertrophic Cardiomyopathy Association.
IFAA - International Foundation for
Autoimmune & Autoinflammatory
Arthritis
International Pain Foundation
Lakeshore Foundation
Latino Commission on AIDS
Lupus and Allied Diseases Association, Inc.
Lupus Foundation of America
MANNA
Men's Health Network
Mental Health America
Miles for Migraine
MLD Foundation
Nashville CARES
National Alliance on Mental Illness

National Association of Nutrition and Aging
Services Programs (NANASP)
National Council for Behavioral Health
National Hemophilia Foundation
National Infusion Center Association
National LGBT Chamber of Commerce
National Minority Quality Forum
National Multiple Sclerosis Society
National Patient Advocate Foundation
National Psoriasis Foundation
New Jersey Association of Mental Health and
Addiction Agencies, Inc.
New Yorkers for Accessible Health Coverage
PCa Blue
Prevent Blindness
Prevent Cancer Foundation
Project ReDirect DC
Rush To Live Org
Rx in Reach Ga Coalition
South Shore Child Guidance Center
Spina Bifida Association
Susan G. Komen
The Association of Black Cardiologists
The Family Resource Network
The New Jersey Mental Health Institute
The Veterans Health Council
Treatment Action Group
US Pain Foundation, Inc.
Usher 1F Collaborative, Inc.
Vietnam Veterans of America
Virginia Hemophilia Foundation