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March 5, 2018

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

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

Dear Secretary Acosta,

On behalf of the Cancer Support Community (CSC), an international nonprofit organization that provides support, education, and hope to cancer patients, survivors, and their loved ones, we appreciate the opportunity to provide comments on the definition of “employer” under Section 3(5) of ERISA. We are strongly opposed to this proposed rule on Association Health Plans (AHPs) due to concerns regarding access and affordability for all patients, particularly those living with a history of chronic illness including cancer.

As the largest direct provider of social and emotional support services for people impacted by cancer, and the largest nonprofit employer of psychosocial oncology professionals in the United States, CSC has a unique understanding of the cancer patient experience. Each year, CSC serves more than one million people affected by cancer through its network of over 40 licensed affiliates, more than 120 satellite locations, and a dynamic online community of individuals receiving social support services. Overall, we deliver more than \$40 million in free, personalized services each year to individuals and families affected by cancer nationwide and internationally.

Additionally, CSC is home to the Research and Training Institute (RTI)—the only entity of its kind focused solely on the experiences of cancer patients and their loved ones. The RTI has contributed to the evidence base regarding the cancer patient experience through its Cancer Experience Registry, various publications and peer-reviewed studies on distress screening, and the psychosocial impact of cancer and cancer survivorship. This combination of direct services and research uniquely positions CSC to provide valuable patient and evidence-informed feedback to the Department of Labor.

President Trump has instructed the Secretaries of Labor, Health and Human Services, and Treasury to amend existing regulations to encourage competition and choice in the health care marketplace. The Department of Labor, therefore, has proposed to expand the definition of an employer in an effort to allow small businesses and associations to offer health insurance to a

group of members, otherwise known as Association Health Plans (AHPs). However, CSC is concerned that this rule will undermine the ability of all patients—particularly those living with a history of chronic illness, including cancer—to access and afford comprehensive health care.

### ***Essential Health Benefits***

The Patient Protection and Affordable Care Act (ACA) implemented critical patient protections (such as essential health benefits) that have transformed the health care system for patients living with a history of illness. The proposed rule would exempt AHPs from these requirements. This would undo the progress made since 2010 and will put patients at significant risk of losing access to health care services that they depend upon for both physical and psychosocial wellbeing. We cannot overstate our opposition to this exemption. However, if this proposed rule is finalized and AHPs do not meet the minimum value for basic coverage, employers and potential beneficiaries must be notified if essential health benefits are not offered through the AHP plan and of their right to receive coverage through the health insurance marketplace with potential premium credits.

### ***Non-Discrimination***

While we were pleased that the proposed rule includes the HIPAA nondiscrimination provisions which would prevent AHPs from discrimination based on health status related factors to determine eligibility. This should be included in the final rule and apply to all AHPs, past or future. However, this provision must be strengthened. As noted above, AHPs would be exempt from essential health benefits, as well as rate reforms and guaranteed issue requirements, which we see as a loophole that will allow plans to sidestep coverage of patients with significant health care needs. For example, a plan without EHBs is not required to cover prescription medications, hospitalizations, emergency room visits, or mental health care services. This effectively rules out coverage for cancer patients. Further, some beneficiaries could be charged higher rates, which is also unacceptable. In CSC's *Access to Care* study (2016), we found that patients were most concerned with high-out-of-pocket costs, high deductibles, high premiums, and high co-pay costs for medications. This policy change would only exacerbate those worries.

### ***Fraud and Abuse***

Historically, some AHPs have been prone to fraud and abuse. Kofman (2005) found that the elimination of state oversight has left some consumers vulnerable to fraud and abuse. States lose the ability to “prevent, identify, and shut down fraudulent plans” (Kofman, 2005). In some cases, businesses and employees have been charged premiums and left without health insurance coverage (Kofman, 2005). The federal government cannot rely upon AHPs to self-report and self-regulate. Consumers will be put at great risk if these practices occur.

### ***Risk Pools***

If this rule is finalized, the individual and small group marketplace will also be at risk of disruption that would leave the sickest and most vulnerable patients without access to affordable, comprehensive health care options. The ACA sought to carefully calibrate the risk pool amongst both healthy individuals who often cost less to insurers and individuals living with illnesses who may be more expensive to insurers. AHPs would tempt healthier individuals with fewer health care needs to leave the marketplace, leaving individuals living with a history of illness, such as cancer patients, with higher premiums, fewer choices, and health care coverage that may not

meet their needs. In our *Access to Care* study (2016) patients reported that the top reasons they could not access care was that their insurance company would not approve it, their doctor did not accept their insurance, or they couldn't afford care. AHPs would likely worsen that reality for many patients.

In conclusion, we appreciate the opportunity to comment on this proposed rule. CSC supports the stabilization of the individual and small group marketplace and we believe this rule would not contribute to the health and wellbeing of Americans. If this rule does proceed, we strongly urge adherence to robust nondiscrimination provisions as all patients need access to affordable, high-quality, comprehensive health care options. If we can serve as a resource, do not hesitate to reach out to me at [efranklin@cancersupportcommunity.org](mailto:efranklin@cancersupportcommunity.org) or 202.650.5369.

Sincerely,



Elizabeth F. Franklin, LGSW, ACSW  
Executive Director  
Cancer Policy Institute of the Cancer Support Community

## References

Cancer Support Community. (2016). *Access to Care in Cancer 2016: Barriers and Challenges*. Washington, DC: Author.

Kofman, M. (2005). *Association Health Plans: Loss of State Oversight Means Regulatory Vacuum and More Fraud*. Georgetown University Health Policy Institute.

Retrieved from <https://hpi.georgetown.edu/ahp.html>.