



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,

On behalf of the National Alliance on Mental Illness (NAMI), I am pleased to submit the following comments on the Department of Labor’s proposed rule expanding the scope and applicability of association health plans (AHPs). NAMI is the nation’s largest organization representing people living with mental illness and their families. As such, NAMI places a high priority on ensuring access and coverage for the health care needs of individuals living with mental illness and co-morbid chronic medical conditions.

NAMI is concerned that this proposed rule on AHPs, if finalized, would fail to provide the critical health coverage, quality health care and benefits necessary to meet the needs of plan enrollees. Expanding the scope and applicability of AHPs would have significant implications for consumers, the marketplace and state regulators – all of which would negatively impact access to quality and affordable health care. The loosely affiliated small businesses joined together as AHPs would be exempt from many of the Affordable Care Act (ACA) rules, including insurance standards and consumer protections such as essential health benefits, premium rating rules and risk pooling. Historically, fraud, abuse and plan solvency present potential concerns with AHPs, especially as oversight and regulatory authority remains in question.

NAMI has the following specific concerns:

Coverage of Health Benefits

The proposed AHPs would not have to comply with the ACA market requirement of covering the ten categories of defined essential health benefits, including mental health and substance use disorder treatment. If the proposed rule were to be finalized, employees of small businesses that choose to participate in AHPs will be offered less comprehensive health coverage. NAMI believes that consumers must have access to the full array of essential health benefits and are concerned that AHPs will not cover all the health services that beneficiaries need or might need in the future, such as treatment for mental health conditions. For example, plans may not cover certain prescription medications, such as those that treat mental illnesses like schizophrenia, bipolar disorder and major depression. Since mental health conditions, like other health issues, are dynamic, individuals may find themselves enrolled in an AHP that does not cover specific services or treatment for an

emergent condition. Because these plans will not be required to cover essential health benefits, individuals may be forced choose between seeking or forfeiting care due to the unaffordable cost of uncovered services.

Individuals enrolled in AHPs who fall ill or experience a mental health crisis would inevitably face financial peril due to unexpected medical costs and high health care bills. Since the ACA took effect, Americans have experienced increased access to comprehensive health care and a 50 percent decline in personal bankruptcies filed between 2010 and 2016.¹ NAMI is concerned that if the proposed rule were to be finalized, this positive trend would be reversed.

It is critical that AHPs do not jeopardize enrollees' health at the cost of minimal benefit coverage. Essential health benefits provide individuals with consistency in the scope of health benefits available to them, should they need them.

Impact on the Health Insurance Market

NAMI is also concerned that, if the proposed rule were to be finalized and AHPs were to flourish, it will inevitably disrupt the risk pool by creating an uneven playing field through adverse selection. Small employers and self-employed individuals that would be enticed by a lower premium – such as those who are young and healthy – will be drawn to AHPs. Individuals who need access to comprehensive health insurance plans, including those with mental health conditions, will be more likely to remain in the individual marketplace. As healthy individuals leave the individual marketplace, premiums will increase for ACA-compliant plans as they have fewer healthy people in their risk pool. This will make it even more difficult for individuals with mental illness to afford the comprehensive care that they need.

NAMI strongly urges the Department of Labor to consider the implications of the expanded definition of employer under existing standards in the Employee Retirement Income Security Act (ERISA). The intent of the President's executive order was to increase consumer choice while curbing health care costs. There is substantial evidence indicating that AHPs will invariably undermine the individual and small group markets, leading to higher health care costs overall, higher premiums for those who stay in the marketplace and high out-of-pocket costs for those covered by AHPs who face unexpected medical needs.

Consumer Protections from Discriminatory Practices

NAMI members have first-hand experience with harmful pre-ACA insurance practices, including annual or lifetime limits and medical underwriting. 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 that 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, including mental illness. Additionally, even if plans are prohibited from declining coverage to people with a pre-existing condition, NAMI is concerned that if issuers aren't required to cover all essential health

benefits, they could preclude coverage of certain services or classes of medications. This would have the same effect as failing to cover individuals with a pre-existing condition.

There are other patient protections, such as cost-sharing limits and rating rules, that these plans would be exempted from covering. AHPs would not be subject to the caps on consumers' out-of-pocket spending on deductibles, copays and coinsurance. However, research has shown that copayments act as a barrier to obtaining medications and appropriate care. When experiencing a mental health condition, individuals are often ambivalent about seeking treatment even when it is desperately needed. Any barrier to accessing medications or emergency care has the potential to threaten recovery and the safety of the individual or others. This will also contribute to the trend of health care costs outpacing income increases for the average family.

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 patient protections are being enforced. It is unclear who will be overseeing these important functions for 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. NAMI believes that this is contradictory to the principle of granting states more flexibility, as it is inserting a federal government presence into state operations unnecessarily. Furthermore, consumers will face an additional burden by having to seek assistance from a federal entity if they encounter an issue with the AHP.

Additionally, if these new AHPs are able to operate in multiple states, there is also a question of how state law will be enforced and which state's law would take precedence. It is for this reason that state 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. Because of the ambiguous enforcement authority, plans sold across state lines may be more susceptible to fraud, and it may be harder for authorities to protect consumers.

Conclusion

NAMI looks forward to working with you and the Department of Labor as you seek to support employers' ability to offer affordable, quality health care coverage to American workers and their families. As you do, we remind you of the importance of maintaining employer-sponsored coverage and sustaining critical access protections. As you make any changes, we urge you not to take away the promise of affordable and quality care and treatment for everyone, especially those living with mental illness.

Respectfully Submitted,

Andrew Sperling
Director of Legislative Advocacy

¹ St. John, Allen. *Consumer Reports*, How the Affordable Care Act Drove Down Personal Bankruptcy. <https://www.consumerreports.org/personal-bankruptcy/how-the-aca-drove-down-personal-bankruptcy/> (2 May 2017).