



March 6, 2018

**VIA ELECTRONIC TRANSMISSION**

Secretary Alexander Acosta  
Assistant Secretary Preston Rutledge  
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**

Dear Secretary Acosta and Assistant Secretary Rutledge:

Planned Parenthood Federation of America (Planned Parenthood) and Planned Parenthood Action Fund (the Action Fund) submit these comments in response to the altered Department of Labor (Department) Definition of “Employer” under Section 3(5) of the Employee Retirement Income Security Act (ERISA) – Association Health Plans (AHPs) released on January 4, 2018 and published in the federal register on January 5, 2018. As a trusted women’s health care provider and advocate, Planned Parenthood takes every opportunity to weigh in on policy proposals that impact the health of people across the country.

Planned Parenthood is the nation’s leading women’s health care provider and advocate and a trusted, nonprofit source of primary and preventive care for women, men, and young people in communities across the United States. Each year, Planned Parenthood’s more than 600 health centers provide affordable birth control, lifesaving cancer screenings, testing and treatment for sexually transmitted diseases (STDs), and other essential care to 2.4 million patients. We also provide abortion services and ensure that women have accurate information about all of their reproductive health care options. One in five women in the U.S. has visited a Planned Parenthood health center. The majority of Planned Parenthood patients have incomes at or below 150 percent of the Federal Poverty Level (FPL).

The Department’s proposed rule would scale back the quality of coverage available and ultimately increase the costs of health care. As such, we strongly oppose the proposed rule as it would have a harmful impact on women and millions of other people across the country.

**I. The proposed rule would increase the number of people enrolled in health plans that do not meet their health care needs.**

This proposed rule would allow the sale of substandard health plans and leave many without assurance that their basic health needs are covered. Under current law, AHPs may be formed only in limited circumstances. But the proposed rule would allow many more employers,

including sole proprietors, to band together to offer health plans that could be classified as large group plans -- plans that would not have to abide by important Affordable Care Act (ACA) consumer protections. In particular, AHPs may be permitted to sell plans that do not include coverage of basic health care services, particularly essential health benefits (EHBs). Before the ACA, individual and small group coverage was not standardized across the country, and individual plans typically did not cover baseline care such as maternity and newborn care, mental health services, and rehabilitative services. To address those coverage gaps head on, the ACA required that all individual and small group plans cover EHBs.<sup>1</sup> These protections apply only to individual and small group plans and not large group plans.

Women of reproductive age, in particular, benefit from the national EHB coverage standard, and subsequently, women would be harmed most if coverage of EHBs is undermined. For instance, before the ACA, only 18 states required insurers to cover maternity coverage in individual and small group plans,<sup>2</sup> and only 12 percent of plans in the individual market covered maternity coverage.<sup>3</sup> Similarly, before the ACA, only 19 states required individual health insurance plans to cover mental health services,<sup>4</sup> and one in five people did not have mental health coverage.<sup>5</sup> One in three people did not have insurance coverage for substance abuse treatment. Additionally, prior to the ACA, coverage of rehabilitative and habilitative services were often outright excluded from insurance policies, or individuals who were privately insured had a hard time proving to insurers that these services were “medically necessary” in order for the insurer to cover them.<sup>6</sup> Even pediatric services, including vision and dental, were not standard services, but instead were frequently sold as riders.<sup>7</sup> If this rule is finalized, we would return to a time where people do not have coverage for necessary and preventive care.

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<sup>1</sup> The EHBs include 1) ambulatory patient services; (2) emergency services; (3) hospitalization; (4) maternity and newborn care; (5) mental health and substance use disorder services including behavioral health treatment; (6) prescription drugs; (7) rehabilitative and habilitative services and devices; (8) laboratory services; (9) preventive and wellness services and chronic disease management; and (10) pediatric services, including oral and vision care.

<sup>2</sup> Kaiser Fam. Found., Pre-ACA State Maternity Coverage Mandates: Individual and Small Group Markets (2010),

<https://www.kff.org/other/state-indicator/pre-aca-state-maternity-coverage-mandates-individual-and-small-group-markets/?activeTab=map&currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

<sup>3</sup> Nat'l Women's Law Center, Women and the Health Care Law in the United States,

<https://nwlc.org/resources/women-and-health-care-law-united-states/>.

<sup>4</sup> Kaiser Fam. Found., Pre-ACA State Mandated Benefits in the Individual Health Insurance Market (2010),

<https://www.kff.org/other/state-indicator/pre-aca-state-mandated-benefits-in-the-individual-health-insurance-market-mandated-coverage-in-mental-health/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

<sup>5</sup> C. Fish-Parcham & L. Mitts, Repealing Essential Health Benefits Will Leave People with Pre-existing Conditions Unprotected, Families USA (June 2017),

<http://familiesusa.org/blog/2017/04/repealing-essential-health-benefits-means-only-wealthy-can-afford-good-coverage>.

<sup>6</sup> K. Godwin, et. al., Cost Associated with Stroke: Outpatient Rehabilitative Services and Medication, Topics in Stroke Rehabilitation (2011),

<http://www.tandfonline.com/action/showCitFormats?doi=10.1310%2Ftsr18s01-676>.

<sup>7</sup> I. Spatz & M. Kolber, The Future of Essential Health Benefits, Health Affairs Blog (Feb. 2017),

<http://www.healthaffairs.org/doi/10.1377/hblog20170214.058765/full/>.

Additionally, this proposed rule would take away states' ability to increase health care access for their citizens. States have long had regulatory authority to regulate insurance plans, including AHPs.<sup>8</sup> However, the proposed rule would allow more AHPs to be treated as large, single employer plans, thereby avoiding states' enforcement authority over AHPs because ERISA preempts many state laws governing large insurance plans. This means AHPs may not have to comply with important state protections, such as contraceptive equity laws that require contraceptive coverage for women or laws requiring that plans have adequate provider networks.

A recently released study found that, if the rule is finalized, over 3 million more people will find themselves in plans that do not meet their basic health care needs. Even more troubling, if this rule becomes law, 130,000 more people will be uninsured by 2022.<sup>9</sup> Due to numerous efforts by this administration to dismantle and undermine the ACA, the number of uninsured people has already increased for the first time since 2008 and the first time since the ACA was signed into law.<sup>10</sup> In fact, since the beginning of 2017, the number of people who are uninsured has increased by 3 million. Thus, this proposed rule, coupled with the barriers to care that the Trump administration has already erected, will increase the number of people uninsured and the number of people that receive coverage through substandard health plans -- both of which will decrease access to necessary and preventive health care.

## **II. The proposed rule would increase the cost of coverage.**

If this proposed rule becomes law, premiums in the individual and small group markets will increase, according to a recently released study.<sup>11</sup> Allowing the sale of these skimpier plans will result in a split insurance pool, with younger, healthier people enrolling in plans that offer less coverage, while older or sicker people will remain in the traditional insurance market. This will cause the price of insurance in the traditional insurance market to rise dramatically. Thus, even though the proposed rule purports to prohibit charging people with pre-existing conditions more for coverage, people with pre-existing conditions will ultimately pay more. Dividing the insurance market in this way has destabilized health insurance markets in the past. For example, when Kentucky did not apply health insurance regulations to AHPs, most insurers stopped selling plans in the individual and small group insurance markets.<sup>12</sup>

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<sup>8</sup> *E.g.* McCarran-Ferguson Act of 1945 (codified at 15 U.S.C.A 1011 et. seq.).

<sup>9</sup> Avalere, Association Health Plans: Projecting the Impact of the Proposed Rule (Feb. 2018), <http://go.avalere.com/acton/attachment/12909/f-052f/1/-/-/-/Association%20Health%20Plans%20White%20Paper.pdf>.

<sup>10</sup> Gallup News, U.S. Uninsured Rate Steady at 12.2% in Fourth Quarter of 2017 (Jan. 2018), [http://news.gallup.com/poll/225383/uninsured-rate-steady-fourth-quarter-2017.aspx?utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=&stream=top-stories](http://news.gallup.com/poll/225383/uninsured-rate-steady-fourth-quarter-2017.aspx?utm_source=newsletter&utm_medium=email&utm_campaign=&stream=top-stories).

<sup>11</sup> Avalere, Association Health Plans: Projecting the Impact of the Proposed Rule (Feb. 2018), <http://go.avalere.com/acton/attachment/12909/f-052f/1/-/-/-/Association%20Health%20Plans%20White%20Paper.pdf>.

<sup>12</sup> Sarah Lueck, Health Care Executive Order Would Destabilize Insurance Markets, Weaken Coverage (Nov. 29, 2017), <https://www.cbpp.org/research/health/health-care-executive-order-would-destabilize-insurance-markets-weaken-coverage>.

Further, younger people that enroll in AHPs may find themselves with coverage that does not meet their health needs -- ultimately, costing them more. This is particularly true for women. For example, without maternity coverage, a vaginal birth can cost \$30,000 and a C-section can cost \$50,000 in out-of-pocket costs.<sup>13</sup> Prescription drug prices are consistently among the top concerns among people in the U.S.<sup>14</sup> Without coverage, prescription drug costs may be unaffordable particularly for women with chronic illnesses.

In addition, under the proposed rule, an AHP could limit membership to a specific industry that has lower claims than other industries. An AHP could also avoid a geographic area where there is a high incident of illnesses and thereby avoid covering sicker populations. Its geographic location can also be used to engage in redlining practices. This will no doubt burden women of color the most given Black and Latina communities experience higher rates certain chronic illnesses, such as cervical cancer, heart disease, and diabetes.<sup>15</sup>

#### **IV. The proposed rule is a part of a concerted effort to undermine the Affordable Care Act.**

This proposed rule invites comment on additional actions the Department could take to promote health care consumer choice and competition across the U.S. health insurance market. In order to achieve the goals of increasing consumer choice and competition, the Department should reverse course. This proposed rule was issued in response to President Trump's executive order that directed agencies to take several actions that will roll back the progress made under the ACA. This action follows a number of actions by the Trump administration to dismantle the ACA, including withdrawing key funding designed to help people with low incomes visit the doctor or access their prescriptions; cutting in half the time period in which people could enroll in Obamacare plans; stopping advertising for affordable health care options available on Healthcare.gov while also cutting funding enrollment assistance; and reducing the requirement for insurers to have adequate provider networks and include trusted providers in their plan networks. The Department's actions are part of a broader effort to undermine health care access, quality, and coverage that will harm people across the country, and will disproportionately impact women.

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Planned Parenthood strongly urges the Department to put the health and lives of all people in this country—including women, people of color, young people, and LGBTQ communities—first and foremost and work towards fulfilling, rather than undermining, the Department's responsibility of ensuring that the American people can access high-quality care at affordable prices.

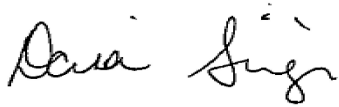
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<sup>13</sup> Ctr. for Healthcare Quality and Payment Reform, The Cost of Having a Baby in the United States (Jan. 2013), <http://transform.childbirthconnection.org/wp-content/uploads/2013/01/Cost-of-Having-a-Baby1.pdf>.

<sup>14</sup> A. Kirzinger, et. al., Kaiser Health Tracking Poll - Late April 2017: The Future of the ACA and Health Care & the Budget (April 2017), <https://www.kff.org/report-section/kaiser-health-tracking-poll-late-april-2017-the-future-of-the-aca-and-health-care-the-budget-rx-drugs/>.

<sup>15</sup> U.S. Dept. of Health and Human Servs. Office of Minority Health, Profile: Black/African-Americans, <https://www.minorityhealth.hhs.gov/omh/browse.aspx?lvl=3&lvlid=61>.

Respectfully,

A handwritten signature in black ink, appearing to read "Dana Singiser". The signature is written in a cursive style with some loops and flourishes.

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