



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)
Definition of “Employer” Under Section 3(5) of ERISA – Association Health Plans**

The Society for Public Health Education opposes the Department of Labor’s proposed rule regarding Association Health Plans issued on January 5, 2018. The Society for Public Health Education is committed to maintaining and expanding access and coverage gains for all Americans, including those with chronic and other serious conditions. We 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 many patients.

The Society for Public Health Education (SOPHE) is a 501 (c)(3) professional organization founded in 1950 to provide global leadership to the profession of health education and health promotion. SOPHE contributes to the health of all people and the elimination of health disparities through advances in health education theory and research; excellence in professional preparation and practice; and advocacy for public policies conducive to health. SOPHE is the only independent professional organization devoted exclusively to health education and health promotion. Members include behavioral scientists, faculty, practitioners, and students engaged in disease prevention and health promotion in both the public and private sectors. Collectively, SOPHE’s 4,000 national and chapter members work in universities, medical/health care settings, businesses, voluntary health agencies, international organizations, and all branches of federal/state/local government.

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 Association Health Plans 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. SOPHE believes 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 Association Health Plans 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.** Additionally, there is precedent for fraud, abuse, and concerns regarding plan solvency with these Association Health Plans, especially as oversight and regulatory authority remains in question.

Comments on the Impact on Health Benefits

As a result of the proposed rule, the Association Health Plans would not have to comply with the ten required categories of defined Essential Health Benefits as established by the Affordable Care Act. As a result of this, 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 not to 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 and an employer should not be making these choices for their employees arbitrarily. If an individual were to become ill and the services they need are not covered by their Association Health Plan, they may have to choose between seeking, delaying 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 2016. SOPHE is afraid that if the proposed rule were to be finalized, this positive trend would be reversed. It is of utmost importance that Association Health Plans do not jeopardize enrollees' health by delivering a low premium that comes with minimal benefit coverage. The mandated Essential Health Benefits package ensures that enrollees have access to a meaningful scope of health benefits available should they need them.

Comments on the Impact on Consumer Protections from Discriminatory Practices

For years healthcare consumers struggled with harmful practices such as annual or life-time limits and medical underwriting prior to the implementation of the Affordable Care Act. 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 Association Health Plans would offer small businesses the same terms large employer plans have received including relief from strict Affordable Care Act and State rules, meaning an Association Health Plan could institute different membership criteria or plan benefit designs based on other classifications. Consumers enrolled in Association Health Plans 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 Association Health Plan 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. Association Health Plans 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 Affordable Care Act 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.

Comments on the Impact on the Health Insurance Market

Should the proposed rule be finalized as written and Association Health Plans 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 Association Health Plans and upset the risk balance that is necessary for the insurance marketplace to be sustainable. This

would lead to an increase in cost-sharing and out-of-pocket costs for individuals in the Affordable Care Act 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. SOPHE 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 Association Health Plans 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 Association Health Plans for unexpected medical needs.

Comments on the 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 currently unclear who will be overseeing these important functions under the proposed Association Health Plans. 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 the federal government 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 Association Health Plan. 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, Association Health Plans 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 it may be more difficult to protect consumers.

In summary, SOPHE urges the Department of Labor to ensure any final rule will provide affordable quality health care to the American people. Additionally, SOPHE urges the Department of Labor 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, SOPHE again urges 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. Please contact Dr. Cicily Hampton at (champton@sophe.org) or 202.408.9804 with any additional questions.

Sincerely,



Elaine Auld, MPH, MCHES
Chief Executive Officer