



AMERICA'S ESSENTIAL HOSPITALS

March 6, 2017

R. Alexander Acosta
Secretary
U.S. Department of Labor
S-2521
200 Constitution Ave. NW
Washington, DC 20210

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

Dear Mr. Acosta:

Thank you for the opportunity to comment on the above-mentioned proposed rule regarding association health plans (AHPs). While we support the Department of Labor’s (DOL’s) efforts to provide additional health insurance coverage options, America’s Essential Hospitals has concerns about the potential effect of the proposed changes on hospital providers and their patients.

America’s Essential Hospitals is the leading champion for hospitals and health systems dedicated to high-quality care for all, including the vulnerable. Filling a vital role in their communities, our 325 member hospitals provide a disproportionate share of the nation’s uncompensated care and devote about half of their inpatient and outpatient care to Medicaid or uninsured patients. Nearly half of member discharges in 2015 were for racial and ethnic minorities—patients who rely on the culturally and linguistically competent care only essential hospitals can provide. Our members provide this care while operating on margins substantially lower than other hospitals—3.2 percent on average compared with 7.4 percent for all hospitals nationwide.¹ Through their integrated health systems, members of America’s Essential Hospitals offer a full spectrum of primary care through quaternary care, including trauma care, outpatient care in ambulatory clinics, public health services, mental health services, substance abuse treatment, and wraparound services vital to vulnerable patients.

As noted in the proposed rule, many Medicaid-eligible workers now might qualify to enroll in AHPs. It is important to recognize that these low-income patients, who rely on essential

¹Roberson B, Ramiah K. Essential Data: Our Hospitals, Our Patients—Results of America’s Essential Hospitals 2015 Annual Member Characteristics Survey. America’s Essential Hospitals. June 2017. www.essentialdata.info/. Accessed February 12, 2018.

hospitals, generally are not as healthy as those with private coverage and typically receive less preventive care.² These patients have come to depend on the extensive services only available at essential hospitals.

To ensure the integrity of AHP coverage, the DOL should consider the following comments when finalizing the above-mentioned proposed rule.

1. The DOL should ensure that AHP benefit packages include all necessary services to covered individuals, including primary and specialty care; services across the care continuum; critical care, such as trauma and intensive-care services; and key enabling services, such as translation and social services.

The proposed rule affords AHPs flexibility in how they define benefit packages, potentially allowing for benefit packages that existed before the protections of the Affordable Care Act (ACA). AHPs might opt to forego coverage of certain services to keep premiums low and limit participation. However, America's Essential Hospitals is concerned such flexibility, if lacking certain guardrails, could lead AHPs to choose affordability over comprehensive coverage. This would leave countless people with too little coverage to meet their health care needs and, ultimately, drive-up uncompensated care.

Many essential hospital patients have well-established, long-standing relationships with their providers; these patients likely will continue to seek care from their current providers regardless of participation in AHP networks. If patients cannot access the services essential hospitals provide within their plan networks, they will face additional out-of-pocket costs to maintain these crucial relationships. Others will have to disrupt their care continuum to find new providers.

Patients with AHP coverage that excludes necessary services would be responsible for significant amounts of their care costs, leading to financial challenges for low-income individuals. Essential hospitals that provide care to vulnerable, low-income patients will face uncompensated costs associated with uncovered services and unpaid cost-sharing for covered services. To reduce these uncompensated and uncovered costs, AHPs must include a minimum range of services, such as coordination programs, care management services, and language services that are available and affordable.

To ensure patients have access to care for all their health needs, the DOL must ensure AHPs guarantee comprehensive, affordable coverage of necessary health care services, at least comparable to essential health benefit package standards.

2. The DOL must commit resources for rigorous oversight to ensure the integrity and solvency of AHPs, so that patients are protected and providers are not saddled with unpaid claims.

² The Henry J. Kaiser Family Foundation. Key Facts about the Uninsured Population. September 19, 2017. <https://www.kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/>. Accessed November 9, 2017.

Provisions in the rule broaden the availability of AHPs. However, despite congressionally-enacted reforms, AHPs have a history of insolvency and fraud.³ The DOL, in the proposed rule, acknowledges that AHPs have failed to pay promised health benefits and have had numerous instances of fraud. Such problems could continue without stringent oversight of these plans.

In addition, the DOL must ensure adequate oversight of AHPs to ensure that plans hold enough dollars to guarantee payment of claims submitted by insured beneficiaries. This is especially important given that AHP premium dollars cannot be floated to pay historical claims costs. Further, depending on the size of the AHP, there must be provisions in place to safeguard against any potential provider losses stemming from high-dollar claims.

Broadening the types of employers who can form AHPs might result in greater access to health insurance, but that coverage will not be meaningful if the plan operates without adequate oversight. **To ensure patients and providers are not burdened with unpaid claims, the DOL must commit the resources needed for stringent oversight of AHPs to prevent fraudulent behavior and insolvency.**

America's Essential Hospitals appreciates DOL's consideration of these comments and welcomes the opportunity to work with the agency on this vital issue. If you have questions, please contact Director of Policy Erin O'Malley at 202-585-0127 or eomalley@essentialhospitals.org.

Sincerely,

Bruce Siegel, MD, MPH
President and CEO

³ The Commonwealth Fund. MEWAs: The Threat of Plan Insolvency and Other Challenges. March 2004. http://www.commonwealthfund.org/usr_doc/kofman_mewas.pdf. Accessed February 12, 2018.