

March 6, 2018

Alexander Acosta
Secretary
Department of Labor
Office of Regulations and Interpretations, Employee Benefits Security
Administration
Room N-5655
200 Constitution Avenue NW
Washington, DC 20210

Re: RIN 1210-AB85

Re: Definition of “Employer” under Section 3(5) of ERISA -- Association Health Plans

Dear Secretary Acosta:

On behalf of more than 37,000 members, the American College of Emergency Physicians (ACEP) appreciates the opportunity to comment on the proposed rule related to association health plans (AHPs) as it affects our practice of emergency medicine and the patients we serve.

As the Department of Labor revises the definition of employer under the Employee Retirement Income Security Act (ERISA) section 3(5), we offer the following comments.

Coverage of Emergency Services

In accordance with President Trump’s Executive Order 13813, the Department of Labor is proposing to loosen some of the current restrictions on AHPs and allow these plans to be part of the large group market. According to the rule, by gaining access to the large group market, these plans would avoid some of the requirements imposed on plans in the individual and small group markets, thereby making health coverage more affordable.

ACEP supports the goal of increasing access to affordable health insurance. However, we are concerned with the impact that the proposal would potentially have on the coverage of emergency services. All non-grandfathered health plans in the individual and small group markets must cover the ten categories of essential health benefits (EHBs), one of which is emergency services. Plans in the large group market are not subject to this requirement.

WASHINGTON, DC OFFICE

2121 K Street NW, Suite 325
Washington, DC 20037-1886

202-728-0610
800-320-0610
www.acep.org

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We believe that emergency services, and the other nine essential health benefits, should be covered by all insurance plans. Without such guaranteed coverage, consumers can be left with a narrow set of benefits that do not ensure them access to the items and services they need to manage their health conditions.

Emergency Departments (EDs) already represent the safety net for millions of Americans and provide care to them without regard to ability to pay, as mandated by the Emergency Medical Treatment and Labor Act (EMTALA). A growing number of consumers already have coverage through a high-deductible health plan. As a result, they tend to defer seeking more routine care or visiting a primary care physician or specialist for more minor conditions or symptoms, since they will need to pay for the visit entirely out-of-pocket if they have not yet reached their deductible. Such deferral or delay will often result in their condition or symptoms becoming exacerbated, and eventually result in an unavoidable trip to the emergency department. At this point, due to the progression of their condition, their care in the ED will be much costlier and more complex than if they had earlier access to more routine care in a physician's office. Similarly, if AHPs are exempt from covering all ten categories of the essential health benefits, this growing problem will be significantly exacerbated, and lead to a crisis point in EDs across the country. Therefore, we strongly urge the Department of Labor to reconsider its proposal and require AHPs to cover emergency services and the other nine essential health benefits.

While large group plans do not have to cover essential health benefits, they must still satisfy "minimum value" requirements to avoid potential liability for the ACA shared responsibility penalties. In addition, they cannot impose any annual or lifetime dollar limits on essential health benefits. The proposed rule does not specifically address if these requirements will carry over to the AHPs, should they be allowed to join the large group market. We therefore urge the Department to, at a minimum, ensure that these requirements for the large group market are carried over to apply to AHPs.

Health Nondiscrimination Protections

The Department of Labor is also proposing in this rule to prohibit AHPs from restricting coverage based on any health factor, as defined in the Health Insurance Portability and Accountability Act (HIPAA) and Affordable Care Act (ACA) health nondiscrimination rules. These health factors include: health status, medical, claims experience, receipt of healthcare, medical history, genetic information, evidence of insurability, and disability. ACEP strongly supports this proposal. Covering all patients regardless of their health status will help lower overall health care costs by enabling patients to seek preventive and other necessary care and avoid unnecessary visits to the ED.

We appreciate the opportunity to share our comments and look forward to working with you and your staff. If you have any questions, please contact Jeffrey Davis, ACEP's Director of Regulatory Affairs at jdavis@acep.org.

Sincerely,

A handwritten signature in black ink that reads "Paul D. Kivela". The signature is written in a cursive, flowing style.

Paul D. Kivela, MD, MBA, FACEP
ACEP President