Consumers for Quality Care

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SCALING BACK QUALITY COVERAGE THROUGH ASSOCIATION HEALTH PLANS

In January, the Department of Labor (DOL) issued a proposed rule developed in response to the Trump Administration's Executive Order from the fall of 2017 which directed the government to expand access to Association Health Plans (AHPs) and other types of insurance products or arrangements. The Affordable Care Act (ACA) took steps to restrict the use of AHPs, because they have a history of insolvency problems and providing poor coverage for consumers. States have broad authority to regulate financial solvency, marketing and rating practices, and insurance contracts. However, the recently proposed rule will make it easier for AHPs to be classified as large group health plans that are subject to fewer regulations than if they were classified as individual or small group market plans. This new order could result in substandard coverage, higher rates of fraud for consumers and new barriers that restrict states protecting their people. Comments are due to DOL in response to this proposal by March 6.

Raising the Risk for Fraud: The proposed rule allows large group plan status for AHPs formed solely for the purpose of sponsoring a group health plan. Previously, a group or association must have existed for a bona fide purpose other than offering health coverage to be considered an employer under federal ERISA law standards. AHPs have long been a vehicle for health plan scams, through both legitimate and phony professional or trade associations. Lowering the barrier to create an AHP by allowing associations to exist solely for the purposes of sponsoring a group health plan increases the risk of rogue, fraudulent and weak coverage that is ultimately bad for patients. *The New York Times* has reported on several such cases. An AHP that was marketed to churches and small businesses in South Carolina diverted $970,000 in premiums, while leaving $1.7 million in unpaid medical claims. A Florida man embezzled $700,000 in premiums from an AHP he marketed, using some of the stolen funds to build a home.

Selling insurance across state lines: The proposed rule allows employers to form an AHP on the basis of geography or industry. This means it can serve employers in a state, city, county or multi-state metro area like a Chamber of Commerce, or serve all businesses in a particular industry, trade or profession nationwide, like electricians. Both of these groupings can lead to a composition of AHPs with members across state lines. However, that does not automatically lower premiums or expand consumer choice. Interstate sales could start a race to the bottom by allowing companies to choose their regulator. Insurers may also seek regulations that allow them to aggressively target the healthiest, while *consumers who get sick will have fewer options for comprehensive policies and protections when things go wrong*. The ability of state insurance regulators to assist consumers would also decrease as their jurisdiction typically does not extend across state lines.

Additional resources for oversight: The ACA increased oversight of AHPs because of a long history of insolvency and instances across several states where plans were advertising that they had comprehensive coverage when it was not actually so. Since this proposal expands access to AHPs, federal and state regulators will be forced to either dedicate more resources towards protecting against mismanagement and abuse in AHPs or allow such mismanagement and abuse to occur. If DOL approves this rule, they must direct adequate resources to implement these new regulations and oversee these plans in order to ensure that appropriate oversight of AHPs is being conducted.

Eliminating key consumer protections: While the proposed rule would rightly move to apply HIPAA non-discrimination protections to all AHPs, these plans would still not be subject to Essential Health Benefit (EHB), guaranteed issue, rating limits, single risk-pool and other non-discrimination requirements. This would allow AHPs to use classifications such as age and gender, for which they can charge differential rates, as proxies for health status. In the end, AHPs would pick those individuals and businesses deemed healthiest to cover, leaving those sick and needing care in collapsing small group and individual markets. The final rule must do more to include key non-discrimination provisions and ensure consumers in every state will be able to get quality and affordable care.

Proposed Rule
Submit a Comment

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