



February 8, 2024

Joe Canary  
Office Director  
Office of Regulations and Interpretations  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Ave. NW  
Washington, DC 20210

**Re: RIN 1210–AC16; Definition of “Employer” – Association Health Plans**

Dear Director Canary,

On behalf of the American Academy of Family Physicians (AAFP), representing more than 129,600 family physicians and medical students across the country, I write in response to the Employee Benefits Security Administration (EBSA) proposed rule titled “[Definition of ‘Employer’ – Association Health Plans](#)” published in the *Federal Register* on December 20, 2023 that would rescind its previously finalized 2018 final rule [Definition of “Employer” Under Section 3\(5\) of ERISA-Association Health Plans](#) (2018 AHP Rule). The AAFP supports policies which increase patient centered care, support family physician practices, and ensure that patients receive high-quality, evidence-based care that addresses health disparities.

The AAFP thanks EBSA for its continued interest in providing robust access to affordable health care coverage for all Americans. **We view this proposed rule as an important step to safeguard the comprehensive, meaningful health insurance coverage that Americans deserve.**

**Rescinding the 2018 AHP Rule**

The AAFP had serious concerns with the 2018 AHP rule, which was designed to expand the definition of “employer” to allow for expanded individual and employer purchase of AHPs. The 2018 rule allowed AHPs to be formed by groups of individuals solely for the purpose of providing health insurance, removing requirements for their association to have a common business interest or contain a genuine organizational relationship outside the provision of health insurance benefits, and adjusting requirements to allow for AHP owners to control details of the health plan.

As a result, the finalized rule allowed some individual employers and self-employed persons to create a single employee welfare benefit plan or group health plan operating in the large group market. This would have enabled newly formed AHPs to be treated as large employer plans, which have health coverage requirements that differ from requirements small businesses and individuals are subject to under the *Affordable Care Act* (ACA). Through this type of formation, such AHPs would no longer be required to provide essential health benefits (EHBs) to enrollees.

The AAFP’s primary concern with the 2018 AHP Rule was that, despite the possibility of expanded access to health insurance coverage, the coverage to be provided by AHPs was not subject to

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important ACA consumer protections, and the plans would not provide meaningful health insurance coverage. Our [comments](#) on the 2018 AHP proposed rule highlighted the risks to consumers, as AHPs would have the option to reduce or eliminate certain essential health benefits under the ACA to avoid covering vulnerable, expensive patients. **While the AAFP supports efforts to improve access to high quality health care coverage for uninsured and underinsured Americans, we encourage regulators to ensure that the coverage options available do not compromise the comprehensive insurance benefits on which Americans rely.**

Despite litigation over the promulgation of the 2018 AHP Rule which set aside its requirements in a [2019 decision](#), and information from the Department of Labor noting that no existing AHPs were formed based on the expanded flexibilities in the 2018 AHP Rule, the AAFP still believes that concrete EBSA regulatory action is helpful in clarifying AHP formation requirements and reinforcing the Administration’s view of the limitations of the 2018 AHP Rule.

### **2023 Proposed Rule**

**The AAFP applauds EBSA’s proposed rule, which rescinds the 2018 AHP Rule in full.** We agree with the statement that this rescission would “resolve any uncertainty regarding the status of the standards established under the rule, allow for a reexamination of the criteria for a group or association of employers to be able to sponsor an AHP, and ensure that guidance being provided to the regulated community is in alignment with ERISA’s text, purposes, and policies.”

As the proposed rule makes clear, prior to ERISA’s passage, certain arrangements lacking the requisite connection to the employer had resulted in abuses leaving consumers both paying premiums and becoming responsible for unpaid medical services that should have been covered by the plan. The 2018 AHP rule increased the likelihood that such mismanaged plans and plans providing more limited coverage would be marketed to consumers. Thus, the full rescission of the proposed 2018 AHP Rule is necessary to ensure such plans are not brought to market. The AAFP firmly believes patients deserve access to meaningful coverage options. By repealing the 2018 AHP Rule, patients will be protected from plans that offer limited benefits and high out-of-pocket costs, coupled with the risk of plan mismanagement and limited EBSA oversight resources.

The protections provided through this proposed rule come during a pivotal time for millions of Americans, as state Medicaid programs complete Medicaid redeterminations as part of the COVID-19 Public Health Emergency (PHE) unwinding. The redetermination process has resulted in and will continue to mean millions of individuals transitioning off Medicaid coverage and assessing options for private health insurance. **The AAFP believes this rule is a critical step in providing protections against plans that would limit coverage, and potentially lack transparency in doing so.**

In addition to comments on rescission of the 2018 AHP Rule, EBSA also seeks comments on whether the Department should engage in additional rulemaking for group health plans that codifies and replaces the pre-2018 AHP Rule policies, issue additional guidance clarifying the application of the Department’s pre-2018 AHP Rule standards, propose revised alternative criteria for multiple employer association-based group health plans, or pursue some combination of those or other alternative steps. **The AAFP encourages the Department to consider future rulemaking which will further clarify the pre-2018 AHP rule policies that were in place and solidify standards for AHP formation and operation in regulation.** The AAFP also urges the Department to consider other ways it can utilize oversight authority to further provide individual consumers with heightened transparency about plan options and conduct necessary oversight of plans that mismanage individual premiums and benefit administration.

### **Additional Comments**

The proposed rule rescinding the 2018 AHP rule is an important step in ensuring consumer access to meaningful health insurance coverage, which is a key tenant of the AAFP's [Health Care for All policy](#). Family physicians provide continuing and comprehensive medical care, health maintenance, and preventive services to patients across their lifespan. While many family physicians provide comprehensive, longitudinal primary care, many also practice in hospitals, emergency departments, urgent care centers, long-term care facilities, and other health care settings. As such, family physicians know firsthand that the implementation of essential health benefits (EHBs) requirements in the Affordable Care Act (ACA) have significantly benefited patients and population health outcomes. The AAFP [strongly urges](#) EBSA to work with federal partners to ensure patients can access coverage with comprehensive essential health benefits, based on latest clinical and scientific evidence.

We appreciate the opportunity to provide comments on this proposed rule. For additional questions, please contact David Tully, Vice President of Government Relations, at [dtully@aafp.org](mailto:dtully@aafp.org).

Sincerely,

A handwritten signature in black ink, reading "Tochi Iroku-Malize" with "MD, MPH, MBA" written below it.

Tochi Iroku-Malize, MD, MPH, MBA, FAAFP  
American Academy of Family Physicians, Board Chair