

March 6, 2018

Jeanne Klinefelter Wilson
Deputy Assistant Secretary
Employee Benefits Security Administration
Department of Labor

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

Dear Secretary Wilson:

The American Association of Nurse Practitioners (AANP), representing more than 234,000 nurse practitioners (NPs) in the United States, appreciates the opportunity to provide comment on the Department of Labor’s (DOL) proposed rule for the Definition of “Employer” Under Section 3(5) of ERISA- Association Health Plans.

NPs are advanced practice registered nurses (APRNs) who are prepared at the masters or doctoral level to provide primary, acute, chronic and specialty care to patients of all ages and walks of life. Daily practice includes: assessment; ordering, performing, supervising and interpreting diagnostic and laboratory tests; making diagnoses; initiating and managing treatment including prescribing medication and non-pharmacologic treatments; coordinating care; counseling; and educating patients and their families and communities. NPs practice in nearly every health care setting including clinics, hospitals, Veterans Affairs and Indian Health Care facilities, emergency rooms, urgent care sites, private physician or NP practices (both managed and owned by NPs), nursing homes, schools, colleges, retail clinics, public health departments, nurse managed clinics, homeless clinics, and home health. NPs hold prescriptive authority in all 50 states and the District of Columbia. It is important to note that 89.2% of NPs are certified in primary care, the majority of whom see Medicare and Medicaid patients. NPs complete more than one billion patient visits annually.

The DOL seeks comment on its proposal to broaden the definition of “employer” and expand the ability of employers and associations to form association health plans (AHPs). While we share the desire of the DOL to ensure access to affordable health insurance, we are concerned that the actions in this proposed rule would have unintended consequences.

Comprehensive Patient Coverage

The DOL’s proposal omits any discussion of comprehensive patient coverage. We encourage the DOL to evaluate the inclusion and uphold the principles of comprehensive health benefits, including providing patients with access to ambulatory care, emergency services, hospitalization, maternity and newborn care, pediatric services, mental health services and addiction treatment, prescription drugs, rehabilitative services and devices, laboratory services, preventive services, wellness services, and chronic disease management.

Ensuring access to medically necessary services is an important component of a stable healthcare system. Nurse practitioners are committed to treating patients in all walks of life and across all settings, but lack

of healthcare coverage is a significant impediment to providing patients with the care that they require. Healthy patients that buy “skinny” plans may find themselves with an unanticipated illness or accident, while also driving up premiums for individuals that require more comprehensive coverage. The DOL should encourage more comprehensive coverage in their AHP rulemaking, or run the risk of undermining other parts of the healthcare marketplace.

Patient Nondiscrimination

The DOL stated that the nondiscrimination protections in this proposed rule would mitigate against adverse selection negatively impacting patients with pre-existing conditions. However, we do not believe that the nondiscrimination protections in this proposed rule are robust enough to prevent the discrimination of patients with pre-existing conditions. Under this proposed rule, it would be permissible for AHPs to discriminate against an employer and their employees based on age or gender, and these could be used as a pretense to discriminate based on health status. Additionally, AHPs could craft plans that would effectively exclude patients with pre-existing conditions because the plans would not cover medically necessary health services.

Historically, patients with pre-existing conditions have faced higher premiums or exclusion from the healthcare marketplace without significant safeguards to prevent these outcomes. These safeguards are not present in this proposed rule. Nurse practitioners provide extensive treatment to patients with pre-existing conditions and are acutely aware of the negative impact that lack of coverage can have on these patients. To protect our nation’s workforce, it is imperative that strong protections are in place to ensure that patients with pre-existing conditions are not excluded from coverage options.

Request or Information on Choice and Competition

In this proposed rule, DOL solicited comments on how to increase choice and competition in the healthcare marketplace. To increase choice and competition in the marketplace, DOL must continue to ensure that workers have access to robust health care networks, and are able to select the provider of their choice, including nurse practitioners. Health plans must not be able to discriminate against healthcare providers based on licensure, which leads to inadequate network panels that limit patient choice.

We thank you for the opportunity to comment on these proposed regulations. We look forward to discussing these issues with you, and should you have comments or questions, please direct them to MaryAnne Sapio, V.P. Federal Government Affairs, msapio@aanp.org, 703-740-2529.

Sincerely,

David Hebert
Chief Executive Officer