



National  
Kidney  
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January 24, 2018

The Honorable R. Alexander Acosta  
Secretary  
U.S. Department of Labor  
200 Constitution Ave. NW  
Washington DC 20210

Re: Proposed Rule: Definition of Employer Under Section 3(5) of ERISA-Association Health Plans  
– RIN 1210-AB85

Dear Secretary Acosta,

The National Kidney Foundation appreciates the opportunity to comment on the proposed rule, Definition of Employer Under Section 3(5) of ERISA-Association Health Plans. The National Kidney Foundation is the largest, most comprehensive and longstanding, patient centric organization dedicated to the awareness, prevention and treatment of kidney disease in the U.S. We urge the Department of Labor to ensure that people with chronic conditions, like kidney disease, or who are healthy and have selflessly donated their kidney to someone with kidney failure are protected from discrimination and have access to essential healthcare benefits under an expanded definition of Association Health Plans (AHP).

The National Kidney Foundation appreciates the non-discrimination protections that would prohibit AHPs from denying coverage or charging higher premiums to individuals or groups based on health status or medical condition. These are important protections for people living with CKD and individuals who are healthy living kidney donors and who historically had difficulty obtaining and affording health insurance. The National Kidney Foundation urges the Department of Labor to maintain this provision in the final rule.

However, the design of a benefit package could be another form of discrimination that the proposed rule does not address since it only requires nondiscrimination in rules for eligibility for benefits not the benefits themselves. The National Kidney Foundation is concerned that without

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also requiring AHPs to provide essential health benefits, discrimination – in the form of denying coverage of vital medications and treatments – could still occur. For example, people with kidney failure rely on dialysis or a kidney transplant to survive. Transplant recipients also need to take immunosuppressive drugs for life to prevent rejection of the transplanted kidney. These are essential life-saving treatments that people who experience kidney failure need to have covered by their insurance. Yet, without requiring AHPs to cover essential health benefits AHPs could circumvent the non-discrimination rule by tailoring benefit packages to not cover vital services that someone with a medical condition might need. This would effectively permit AHPs to discriminate against someone based on health status to achieve a more favorable risk rating. Additionally, people purchasing health insurance through an AHP, unaware of their future health status, may later learn that they don't have coverage of critical benefits when they most need them. Therefore, to strengthen non-discrimination protections the National Kidney Foundation strongly recommends that the ACA essential health benefits requirements also apply to AHPs.

The National Kidney Foundation appreciates the opportunity to comment on this proposed regulation. We sincerely hope the Department of Labor will strengthen the non-discrimination protections in this rule by applying the ACA requirement to cover essential health benefits to AHPs that could be considered large employers for the purposes of obtaining group health coverage.

Sincerely,

*Kevin Longino*

Kevin Longino  
CEO  
Kidney Transplant Patient