Wisconsin BPDD

WISCONSIN BOARD FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES

March 1, 2018

U.S. Department of Labor
Employee Benefits Security Administration

Re: Proposed Associated Health Plan rule (Document number 2017-28103)

To Whom It May Concern:

Thank you for the opportunity to comment on the proposed rule on Associated Health Plans (AHPs).

Many people with Intellectual and Developmental Disabilities (I/DD), people with intermittent or progressive health conditions, family members of people with disabilities, and caregivers of people with disabilities have employer sponsored health insurance that complies with Affordable Care Act (ACA) requirements or obtain their health care coverage through Affordable Care Act exchange plans. Currently, the ACA requires, with limited exceptions, that health insurance plans include coverage of ten essential health benefits[1] and consumer protections,[2] which are critical to people with disabilities and their families.

The proposed rule would increase—perhaps dramatically so—the number of AHPs regulated under rules that do not have to comply with ACA standards, required essential health benefit coverage, and consumer protection requirements. We find it likely that this rule will result in:

- many AHPs offering less or no coverage in many of the essential health benefit categories required by the ACA in exchange for lower premiums;
- plan designs that allow and even incentivize healthier individuals to purchase non-ACA compliant coverage, leading to higher costs for people with disabilities in ACA regulated markets;
- and plan designs that actively discourage those with health care needs from applying.

[1] Ambulatory patient services (outpatient care); Emergency services; Hospitalization (inpatient care); Maternity and newborn care; Mental health and substance use disorder services, including behavioral health treatment; Prescription drugs; Rehabilitative and habilitative services and devices; Laboratory services; Preventive and wellness services and chronic disease management; Pediatric services, including oral and vision care.

[2] Consumer protections included in the ACA that are particularly beneficial to people with disabilities, people with intermittent or progressive health conditions, and their families include: guarantee people with pre-existing conditions can be insured; prohibitions against charging higher premiums based on health status; prohibitions against denying coverage of certain medical conditions; prohibitions against denying coverage of certain medications; no annual or lifetime limit caps on health care cost coverage; therapy coverage assurances for children with autism and people with degenerative diseases who need habilitative care to gain new or maintain abilities; requirements for mental health and substance abuse disorder services including behavioral health treatment, and critical prescription drug coverage.

Many people with disabilities and caregivers work for small employers or in low wage industries—such as retail and food service—that have been proponents of AHPs. If more small employers, employers within a geographic region, or businesses within the same trade, industry, or profession associating for the purpose of forming an AHP, opt to obtain AHP coverage, people with disabilities or chronic health conditions, and their caregivers could lose critical health care coverage—if the AHP offers less or no coverage for the ten essential health benefits required by the ACA—and face rising premiums/co-pays/deductibles and/or lose access to subsidized marketplace coverage.

National health policy and insurance experts agree that AHPs are likely to syphon healthier lower cost people away from ACA compliant marketplace plans. A February 2018 Avalere study projected 4.3 million people would leave ACA compliant marketplace plans for cheaper and lower coverage AHPs over the next five years, resulting in a 4% premium increase for individuals in marketplace plans, with an additional 140,000 estimated to lose health care coverage altogether.

The proposed rule gives AHPs significantly more flexibility in designing benefits and setting premiums. Under this rule AHPs would be free to rate on factors like age, group size, and the type of industry in which an employer works to determine coverage offered and consumer payments (premiums, co-pays, deductibles). All these factors can act as deterrents for older, less healthy, higher cost individuals.

The non-discrimination provisions within the proposed rule are insufficient to prevent discrimination against people with disabilities and other people with pre-existing conditions. Under the rule, AHPs would be allowed to design their products in a way that makes them unattractive and discourages people with health needs from enrolling. For instance, if an AHP opts to not offer coverage for prescription drugs or rehabilitative/habilitative services as a way of keeping premiums low, it also discourages enrollment of employees with pre-existing conditions (or who have family members with pre-existing conditions) and self-employed individuals.

Many people with disabilities—especially in the context of Wisconsin's growing caregiver crisis—rely on family members to provide some or a large proportion of the caregiving needed. Families often provide daily supports including personal care, supervision, service coordination, and medical and financial management[3]. Wisconsin absolutely needs these caregivers to keep older adults and people with disabilities in their homes and out of expensive Medicaid-funded institutional settings.

A 2016 AARP report found more than half of family caregivers reported a work-related stressor, such as having to take unpaid time off. We hear from families across the state that they have often had to rearrange schedules and even leave their jobs to fill in caregiving gaps. If health care costs continue to rise unchecked without corresponding pay increases, and more healthy people leave the exchanges for AHP plans exasperating the cost increases for the remaining people in the market who need ACA compliant plans, we are concerned that more families will be faced with leaving their jobs to lower their income and assets in order to qualify for Medicaid.

[3] An estimated 40% of the overall community workforce includes family members. Nationally, families provide more than $475 billion per year in unpaid direct care for their family members, which would otherwise have to be paid for by Medicaid.

BPDD is charged under the federal Developmental Disabilities Assistance and Bill of Rights Act with advocacy, capacity building, and systems change to improve self-determination, independence, productivity, and integration and inclusion in all facets of community life for people with developmental disabilities.

Our role is to seek continuous improvement across all systems—education, transportation, health care, employment, etc.—that touch the lives of people with disabilities. Our work requires us to have a long-term vision of public policy that not only sees current systems as they are, but how these systems could be made better for current and future generations of people with disabilities.

Thank you for your consideration,

Beth Swedeen, Executive Director
Wisconsin Board for People with Developmental Disabilities