

THE ORTHOTIC AND PROSTHETIC ALLIANCE

1501 M Street, NW, 7th Floor
Washington, DC 20005
Phone: 202-466-6550
Fax: 202-785-1756
Email: opalliance@gmail.com

March 6, 2018

VIA ELECTRONIC SUBMISSION

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

RE: Public Comments from O&P Alliance on Association Health Plans and the Definition of “Employer” under Section 3(5) of ERISA (RIN 1210-AB85)

Dear Secretary Acosta:

The undersigned members of the Orthotic and Prosthetic Alliance (The O&P Alliance) appreciate the opportunity to comment on the proposed rule entitled *Definition of “Employer” under Section 3(5) of ERISA – Association Health Plans*¹ (the Proposed Rule). The O&P Alliance is a coalition of five major national orthotic and prosthetic organizations representing over 13,000 O&P professionals and 3,575 accredited O&P facilities, which serve millions of individuals with disabling conditions in need of orthopedic braces and prosthetic limbs.

I. Essential Health Benefits

This rule as proposed has the potential to significantly alter the dynamics of the existing individual and small group markets and, as such, the O&P Alliance must express its significant concerns with the expected effect this rule will have on access to essential health benefits, particularly rehabilitation services and devices. Orthotics and prosthetics are routinely covered in individual and small group marketplace plans under the category of rehabilitative and habilitative services and devices, established in 2010.²

For the first time, this definition established a uniform, understandable federal definition of rehabilitation services and devices that became a standard for national insurance coverage. This definition has become a floor for coverage of orthotics and prosthetics in both individual and small group health plans. It was also adopted by States that chose to expand their Medicaid programs. Importantly, the definition includes both services *and* devices. The adoption of a federal definition of rehabilitation and habilitation services and devices minimized the variability in benefits across States and the uncertainty of coverage of these services.

¹ Definition of “Employer” Under Section 3(5) of ERISA—Association Health Plans, 83 Fed. Reg. 614 (Jan. 5, 2018). Available at: <https://www.gpo.gov/fdsys/pkg/FR-2018-01-05/pdf/2017-28103.pdf>.

² Patient Protection and Affordable Care Act (ACA), Section 1302.

We share the Department’s goal of increasing access to affordable health care, but we believe the proposed rule would leave adults and children, particularly those with limb loss and orthopedic disabilities, with less comprehensive coverage and higher out-of-pocket costs. We believe that insurance coverage, whether through an employer, a plan purchased on the exchange, or an association health plan (AHP), must ensure access to timely, affordable, high-quality health care that meets the needs of individuals with disabilities.

The proposed rule may reduce the short-term cost of coverage through AHPs, but we expect AHPs to primarily attract relatively younger and healthier consumers. This will leave relatively older and less healthy people in the individual and small group markets which will further drive up premiums for marketplace plans. According to the proposed rule, AHP consumer protections are not nearly as strong and benefit packages will not be nearly as comprehensive as plans in the current marketplaces. Widespread adoption of AHPs will lead to adverse selection which will have the net effect of driving insurance costs higher for current marketplace plans as the insurance pool is skewed. At the same time, AHP enrollees will be exposed to non-covered services and increased out-of-pocket costs when the bare bones benefit packages they purchase will more likely fail to meet their needs when needed most.

Orthotic and prosthetic care is highly cost-effective and decreases downstream costs to the health care system and society at large for unnecessary disability and dependency. It is essential that any regulatory change to the individual or small group market, including AHPs, maintain access to comprehensive orthotic and prosthetic coverage.

II. Annual and Lifetime Limits

Based on the Proposed Rule, it is our understanding that the prohibition against annual and lifetime limits would still apply to AHPs. We share the Department’s concerns regarding the affordability of coverage, but remind DOL of the importance of protecting families from potentially-bankrupting out-of-pocket costs. Enrollment in an AHP not subject to the prohibition of annual and lifetime limits on the cost of benefits could financially overwhelm an individual who requires extensive orthotic and prosthetic care as well as other rehabilitative health care services. In addition, annual and lifetime caps are currently tied to essential health benefits. We seek confirmation from DOL of the application of this important provision to AHPs and an explanation as to how these provisions would operate if the Department does not require coverage of essential health benefits under AHPs. In addition, we seek this same clarification regarding maximum out-of-pocket costs which are also linked to essential health benefits.

III. Oversight of Association Health Plans

Under the Proposed Rule, there is a lack of clear oversight over AHPs, including confusion over whether it is the state or the federal government’s responsibility to regulate AHPs. We strongly recommend further clarity on the role of states in the regulation of fully insured AHPs. Historically, some AHPs have demonstrated a pattern of insolvency and unpaid claims. Authority of state regulators to regulate and oversee AHP plans is essential, as there are few consumer remedies available under ERISA if a plan denies coverage. It is critical that DOL

conduct strong oversight, in collaboration with state regulators, of AHP benefit packages, given the weakening of health benefit design standards that will result from this proposed ERISA expansion.

For these reasons, we urge DOL to seriously reconsider the proposed rule and, if it moves forward with AHPs, ensure that the final regulations require these plans to comply with the same consumer protections and cover the same minimum essential health benefits and other consumer protections as exchange-based health plans, especially coverage of orthoses and prostheses under the category of benefits known as rehabilitation and habilitation services and devices.

The O&P Alliance greatly appreciates your attention to our concerns involving this important proposed rule. To contact the O&P Alliance directly, please call Peter Thomas, O&P Alliance Counsel, at your convenience at 202-872-6730 or email Peter.Thomas@ppsv.com. Thank you for your consideration of our views.

Sincerely,



David McGill
President
National Association for the
Advancement of Orthotics and Prosthetics



Deborah Merritt Plescia, CPO
President
American Board for Certification in
Orthotics, Prosthetics and Pedorthics, Inc.



Alicia J. Davis, MPA, CPO, FAAOP(D)
President
American Academy of Orthotists and
Prosthetists



James J. Weber
President
American Orthotic & Prosthetic Association



Wayne R. Rosen, BOCP, BOCO, LPO, FAAOP
Chair, Board of Directors
Board of Certification/Accreditation (BOC)

rosthettists (AAOP)
American Board for Certification in Orthotics, Prosthetics, and Pedorthics, Inc. (ABC)
American Orthotic & Prosthetic Association (AOPA)
Board of Certification/Accreditation, International (BOC)
National Association for the Advancement of Orthotics and Prosthetics (NAAOP)