February 20, 2024

US Dept. of Labor, Employee Benefits Security Administration
Office of Regulations and Interpretations
200 Constitution Ave. NW, Room N-5655
Washington, DC 20210

Attention: Proposed Rescission of AHP Final Rule RIN 1210–AC16

Submitted electronically via Regulations.gov.

On behalf of the members of Common Ground Healthcare Cooperative, I write to provide comments on the proposed rescission of the Association Health Plan (AHP) Final Rule.

Common Ground Healthcare Cooperative is a nonprofit, fully licensed health insurer with a mission that puts consumers first in all decisions we make or can influence. The comments provided here reflect that mission as we advocate for policies that will ensure that all Wisconsinites may access health coverage that is high quality and affordable.

It is important to note that prior to the Affordable Care Act, I also worked to create a group purchasing option for farmers called the Farmers' Health Cooperative of Wisconsin, and so I understand the perspectives of those that may oppose this rule believing it eliminates some options to make health coverage more affordable for consumers. Still, I support the proposed recission of the 2018 rule because today, the Affordable Care Act is in place to protect consumers against insurance company practices that we formerly had tried to address through associations – namely improved access to coverage, community rating for renewals, and better benefits where little or none existed previously. That is a key difference.

AHPs Impact on the Health Insurance Markets

Based on observations of the market at the time, it seemed many newly forming AHPs under the 2018 rules were intent on taking protections away from consumers rather than negotiating for additional protections. The AHPs that started to form in 2018 prior to the court ruling were set up to attract healthier individuals while sicker individuals were rejected and were to remain in the individual and small group health insurance markets. This is because under the 2018 rule, AHPs were allowed more flexibility in the following key areas:

- Market Regulations: Under the 2018 rules, AHPs do not have to offer insurance to individuals and groups that do not meet participation requirements (those outside of profession or geography), therefore AHPs are likely to "game the system" by structuring rules to attract the healthiest groups and may do so by targeting industries that have more favorable risk profiles. Further, AHPs are not required to participate in the Risk Adjustment program which will pull those healthier individuals out of the calculation to the detriment of those participating in risk adjustment.

- Rating rules: Under the 2018 rules, AHPs were allowed to rate for age using a ratio that is broader than 3:1. This gives them the ability to structure pricing to be more attractive than the existing insured market to younger individuals and less attractive than the existing insured market to older individuals. Further, AHPs appear to be able to rate differently for gender which will enable them to rate women of child-bearing age higher than men of the same age.

- Benefit rules: If AHPs are not required to offer essential health benefits (EHBs), this will enable AHPs to attract healthier individuals by offering leaner coverage which is a common lever used by insurers to offer less expensive health insurance.

The combination of these factors created a situation where new AHPs were benefiting only two groups of people: 1) the individuals involved in creating the AHP to promote membership in an association and 2) health individuals for whom coverage would be more affordable. Unfortunately, taking healthy people out of the individual and small group markets would result in a fragmentation that leads to higher prices for ACA-compliant coverage for everyone outside the AHP. And even the lower prices would come at a cost for certain individuals within the AHP, as explained below.

AHPs Impact on Consumers

In the above section, I explained why AHPs are likely to offer lean benefit plans to attract the healthiest individuals. Unfortunately, lean coverage does not translate into needed coverage even for the healthiest individual who later becomes sick. For example, a plan that does not cover expensive specialty medications may appear to be a great idea for a healthy 30-year-old. But, if that individual acquires a disease that requires specialty medicine treatment, they will not have needed coverage. Since these medicines can cost hundreds of thousands of dollars, the individual is likely to be financially ruined due to lack of coverage. That is, unless they are "lucky" enough to have been diagnosed during the health insurance open enrollment period, when they are able to purchase single risk pool coverage.

I also have concerns about the viability of AHPs as a stable alternative for consumers. History shows the odds are highly stacked against the long-term viability of AHPs even when good decisions are made in the best interests of members. There is typically no compelling reason for the members of the AHP to stay together as a group, and one year of terrible experience is likely to lead to an exodus of healthy members if rates are set appropriately.

Our Position and Additional Considerations

We support full recission of the 2018 AHP regulation and urge the agency to finalize this policy. That said, having previously been involved in creating a purchasing cooperative to secure protections not offered in the pre-ACA market, I understand that sometimes good actors attempt work through AHPs to benefit a subset of employers, and I assume this is why the agency is requesting feedback on the possibility of formalizing pre-2018 guidance.

We believe it is a good idea to put strong guardrails around AHPs and are not opposed to the pre-2018 criteria that was in place as well as an agency-level process of considering AHPs on a case-by-case basis. We would also urge the agency to consider a broader set of criteria that ensures that associations are not suboptimizing individual and small group insurance markets that are providing coverage to all applicants regardless of health status. For example, we believe it is imperative that

AHPs be required to provide coverage of pre-existing conditions and essential health benefits and be subjected to state-level solvency requirements and rate review.

If EBSA were to consider an alternative approach, it should also require transparency of AHPs beyond what was previously required, including how rates are set, capitalization requirements, details on how benefits are paid, and how every dollar is spent by the association (including administration fees and the like). This "economic participation" and feeling of ownership would promote the affinity of AHP members to one another.

The Special Case for Farmers

As mentioned, I previously worked to protect Wisconsin's farm families through a purchasing cooperative that provides farmers more leverage to demand higher value coverage. This purchasing cooperative still exists but in grandfather status, meaning it cannot accept new members. Farming is one profession that is currently not served well by the ACA and merits additional attention from federal regulators.

During its 2023-24 session, the Wisconsin legislature considered a proposal that would have allowed our Farm Bureau Federation to offer a "benefit" to farmers that was explicitly exempt from the definition of insurance under state law. There are other Farm Bureau plans that exist around the country, and because this "benefit" would have been self-funded, it would have been considered a MEWA under federal law.

Of course, all the concerns I communicated in this comment letter also apply to that proposal and the general idea of Farm Bureau health plans. I could not support a proposal that would give our nation's farm families inferior coverage without all the consumer protections they would otherwise benefit from through an ACA-compliant plan.

That said, the ACA creates problems for farm families. This is because their income fluctuates dramatically from year to year affecting their eligibility for Premium Tax Credits (PTCs). It is not simply that farmers have good years and bad years related to crop production or the health of their livestock, but also because the purchase of farm equipment triggers depreciation income. We urge the Department of Labor to work with the other federal agencies to address the root cause of this problem – the way farm income is calculated for the purposes of PTCs – rather than allow these nonpreferred band aid solutions to proliferate for many of our hardest working Americans.

Conclusion

AHPs are not a new idea. They have been around for a long time, and most have failed for reasons not addressed in this rule. We appreciate the opportunity to offer these comments to encourage the administration to protect insurance consumers both inside and outside AHPs.

If you have any questions or would like to discuss these suggestions further, please do not hesitate to contact Melissa Duffy, Government Affairs, at mduffy@dcstrategies.org.

Sincerely, Cathy Mahaffey CEO
Common Ground Healthcare Cooperative