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March 5, 2018

R. Alexander Acosta
Secretary of Labor
Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

RE: Association Health Plans Proposed Rule (RIN-1210-AB85)

Dear Secretary Acosta,

On behalf of the National Council for Behavioral Health (National Council), thank you for the opportunity to submit comments on the Department of Labor’s (DOL) proposed rule published on January 6, 2018. The National Council is the unifying voice of America’s health care organizations that deliver mental health and addictions treatment and services. Together with our 2,900 member organizations serving over 10 million adults, children and families living with mental illnesses and addictions, the National Council is committed to all Americans having access to comprehensive, high-quality care that affords every opportunity for recovery.

In October 2017, President Trump issued an executive order instructing the Secretaries of Labor, Health and Human Services, and Treasury to make changes to existing regulations to accommodate the administration’s vision for Association Health Plans and short-term plans to promote more health care choices for consumers, and encourage competition in the health insurance marketplace. In response to this directive, the Department of Labor has proposed to expand the definition of an “employer”, allowing more small businesses and self-employed individuals to join together for the sole purpose of offering health insurance.

The National Council strongly believes the proposed changes would negatively impact American’s access to quality and affordable health care, further widen the coverage gap of mental health and addiction services in our country’s health care market and ultimately disrupt the individual and small business marketplace. The new AHPs would be exempt from many of the consumer protections created by the Affordable Care Act (ACA), including new insurance standards such as the Essential Health Benefits, premium rating rules and risk pooling. The new guidance would erase years of progress in the insurance market of offering quality mental health and addiction coverage at parity with physical and surgical health care services.

Coverage of Essential Health Benefits

According to the Substance Abuse and Mental Health Services Administration, one in five Americans experience mental illness every year and almost eight million experience a substance use disorder simultaneous to a mental illness. Without access to appropriate treatment, they are more likely to

experience crises that lead them to utilize costly emergency room services: nearly 12 million visits made to U.S. hospital emergency departments involve people with a mental illness, substance use disorder, or both. Recent studies calculate that untreated mental illnesses and addiction cost the economy hundreds of billions of dollars every year in lost work productivity and health care treatment costs.

The proposed rule would not require Association Health Plans to comply with the ACA's health benefits coverage requirements known as Essential Health Benefits. The new guidance would allow for a race to the bottom across AHPs, encouraging plans to pursue less generous and more narrow benefit designs that would increasingly harm and discriminate against consumers living with mental illness and/or substance use disorders. The essential benefits raised the minimum floor of health coverage in America and have been a cornerstone in the effort to increase access and affordability of treatment services for mental illness and addiction, including opioid and alcohol addiction. Removing these protections and assurances in health care coverage would harm not only the employees serviced by these plans, but would also cause a direct harm the economy in driving up costs related to untreated illnesses.

Protections from Discriminatory Protections

The National Council recognizes and applauds the Department of Labor for maintaining the guaranteed issue provisions of the ACA. The proposed rule makes clear that AHPs are not allowed to discriminate or restrict membership in the association based on health factors, including: health status, medical condition - including both physical and mental illnesses, claims experience, receipt of health care, medical history, genetic information, evidence of insurability, and disability.

However, even if plans are prohibited from declining coverage to people with a pre-existing condition like a mental illness or substance use disorder, issuers could preclude coverage of certain services, providers, or classes of medications if they are not required to cover all ten Essential Health Benefits. We believe this would have the same effect as failing to cover individuals with a pre-existing condition or a chronic and complex illness.

In addition, despite the continuation of guaranteed issue and the clear prohibition of marketplace discrimination, the proposed rule does not protect individuals from other discriminatory practices such as cost-sharing limits and rating rules. AHPs would not be subject to caps for consumers' out-of-pocket spending on deductibles, copays and coinsurance. This is yet another change from the ACA and one that will allow insurers to charge sicker, more vulnerable customers more for health coverage than healthier ones. At its end, allowing AHPs to sidestep the community rate provisions will lead to patients being priced out of the market for purchasing comprehensive, lifesaving health insurance.

The protections passed in the ACA ensured that individuals living with chronic and complex illnesses would not also be subject to financial ruin. Should AHPs allowed to implement these harmful tactics, millions of Americans could yet again face the financial peril while working to recover from and live with a chronic condition like mental illness or addiction.

Impact on Parity

Passed in 2008, the Mental Health Parity and Addiction Equity Act required that “if” insurance plans offered mental health and addiction treatment benefits, that they do so at parity with physical and surgical health benefits. With the passage of the Affordable Care Act and the implementation of the Essential Health Benefits in 2010, the law changed the “if” to “must”, meaning that insurance had to offer mental health and addiction treatment benefits as a part of all insurance plans and that they must do so at parity with physical and surgical benefits. The proposed rule, relieving AHPs of the required essential benefits, would put in jeopardy the promise of throughout these plans and the small insurance market.

We look forward to working with you and your Department as you seek to provide affordable quality health care to the American people. As you do, we urge you to keep in mind the importance of maintaining access to quality, affordable care for people who already have coverage and the critical consumer protections that are currently in place. As you pursue changes to the individual and small group marketplace, we urge you not to reserve the promise of affordable and quality care and treatment for everyone, especially people living with serious and complex chronic health conditions.

The National Council appreciates the opportunity to provide comments on this proposed rule. We welcome any questions or further discussion about the recommendations described here. Please contact Chuck Ingoglia at chucki@thenationalcouncil.org or 202-684-7457 ext. 249. Thank you for your time and consideration.

Sincerely,



Linda Rosenberg, MSW
President & CEO
National Council for Behavioral Health