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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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February 29, 2024

VIA ELECTRONIC TRANSMISSION

The Honorable Julie Su
Acting Secretary
U.S. Department of Labor
200 Constitution Ave. NW
Washington, D.C. 20210

Dear Acting Secretary Su:

On December 20, 2023, the U.S. Department of Labor (“the Department”) released its Notice of Proposed Rulemaking, “Definition of ‘Employer’-Association Health Plans” (AHPs). AHPs provide a lower-cost alternative for small businesses, their employees, and independent contractors to access health care coverage. Rather than enhance health insurance options for the nearly 50 million people who work for the 3.2 million U.S. small businesses and the 27 million independent contractors in America, the Department’s proposed regulation will rescind the ability of many small businesses and workers to participate in cost-saving AHPs.¹ I write to oppose the proposal and urge its withdrawal.

The proposed rule reverses a 2018 final rule that established a new definition of “employer” and a more flexible “commonality of interest” test, increasing the accessibility of AHPs under the Employee Retirement and Income Security Act (ERISA). The Department’s recent proposed rule delivers another blow to affordable coverage options for American small businesses at a time when, under Bidenomics, health care costs are increasing and small employers are struggling to compete in the labor market.

Health care coverage has become increasingly unaffordable, with high costs being most acutely felt by small businesses. Workers employed by small firms pay over \$8,300 on average towards premiums each year for family coverage, nearly 30 percent more than those at large firms.² AHPs allow small businesses, and their employees, to access the benefits that large employers

¹ Drew Altman, *Family Health Insurance Is No Longer Affordable Through Small Employers*, KFF (Nov. 28, 2023), <https://www.kff.org/health-costs/perspective/family-health-insurance-is-no-longer-affordable-through-small-employers/>.

² *Figure 6.7, Average Annual Worker and Employer Premium Contributions and Total Premiums for Single and Family Coverage, by Firm Size, 2023, 2023 Employer Health Benefits Survey*, KFF (Oct. 18, 2023), <https://www.kff.org/report-section/ehbs-2023-section-6-worker-and-employer-contributions-for-premiums/#figure67>.

receive, including lower costs for health care coverage. Without affordable ways to provide health insurance coverage, many small businesses may be forced to stop offering coverage, pushing employees into the individual market, where costs continue to skyrocket. This year, premiums on the Affordable Care Act (ACA) marketplaces increased by six percent.³ A 40-year old faces an average unsubsidized monthly premium cost of \$420 for a bronze plan, \$549 for a silver plan, and \$713 for a gold plan.⁴ These high costs only encompass health insurance premiums; out-of-pocket limits in the individual market are at record highs of \$9,450 for an individual and \$18,900 for a family. The cost of health care is simply unaffordable for many individuals and families.

Ninety-eight percent of small businesses offering insurance worry that health insurance costs will become unsustainable within ten years.⁵ AHPs provide a solution to help manage the cost of health care coverage for small businesses and independent workers. The Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) estimated that under the 2018 rule, premiums for AHPs would be around 30 percent lower than premiums for fully regulated small-group coverage.⁶

More affordable health insurance means higher wages and more opportunities for workers. Rising health insurance costs have a knock-on effect on other aspects of the labor market, and workers bear the costs. According to one estimate, a 10 percent health care premium increase results in an offsetting decrease in wages of 2.3 percent, decreases the probability a worker is employed by 1.2 percent, and increases the probability a worker is part time by 1.9 percent.⁷

For main street, more affordable health insurance supports efforts to attract and retain needed talent. Sixty-three percent of small employers cite recruiting and retaining workers as an incentive to sponsor health insurance.⁸ Large employers and labor unions are able to negotiate on behalf of their employees for more affordable health coverage due to their size and economies of scale. Leveling the playing field for small employers helps them provide more insurance to more

³ Jared Ortaliza et. al., *How much and why 2024 premiums are expected to grow in Affordable Care Act Marketplaces*, Peterson-KFF Health System Tracker, (Aug. 4, 2023), <https://www.healthsystemtracker.org/brief/how-much-and-why-2024-premiums-are-expected-to-grow-in-affordable-care-act-marketplaces/#Distribution%20of%20proposed%202024%20rate%20changes%20among%20322%20reviewed%20ACA%20marketplace%20insurers%C2%A0>.

⁴ Les Masterson & Michelle Megna, *How Much Does Health Insurance Cost In 2024?*, Forbes Advisor (Jan. 3, 2024), <https://www.forbes.com/advisor/health-insurance/how-much-does-health-insurance-cost/>.

⁵ *New NFIB Survey: Health Insurance Costs Remain a Significant Challenge for Small Businesses*, The National Federation of Independent Business (Mar. 23, 2023), [https://www.nfib.com/content/press-release/healthcare/new-nfib-survey-health-insurance-costs-remain-a-significant-challenge-for-small-businesses/#:~:text=Almost%20all%20\(98%25\)%20of,the%20next%205%2D10%20years](https://www.nfib.com/content/press-release/healthcare/new-nfib-survey-health-insurance-costs-remain-a-significant-challenge-for-small-businesses/#:~:text=Almost%20all%20(98%25)%20of,the%20next%205%2D10%20years).

⁶ *How CBO and JCT Analyzed Coverage Effects of New Rules for Association Health Plans and Short-Term Plans*, Congressional Budget Office (Jan. 2019), https://www.cbo.gov/system/files/2019-01/54915-New_Rules_for_AHPs_STPs.pdf.

⁷ Katherine Baicker & Amitabh Chandra, *The Labor Market Effects of Rising Health Insurance Premiums*, Journal of Labor Economics (July 2006), <https://www.jstor.org/stable/10.1086/505049?seq=3>.

⁸ Roger Lee Mendoza, *Why Do Small Firms Offer Health Insurance in Spite of the Employer Mandate Exemption?*, (2022), <https://content.naic.org/sites/default/files/why-do-small-firms-offer-health-insurance-in-spite-of-the-employer-mandate-exemption-jir-2022-06.pdf>.

employees, allowing them to compete with larger firms for much-needed workers, and to hire such workers on a full-time basis rather than part time. Providing competitive health insurance options additionally bolsters small employers' strong interest in fostering a healthy and productive workforce in their geography.

The Department's proposed rule also takes away potential affordable health coverage options for independent contractors. Nearly one in four self-employed workers is uninsured.⁹ Affordability is the most common reason that uninsured individuals lack health insurance coverage.¹⁰ Rather than expand access to affordable coverage options, the Department's proposed rule subjects workers to the increasingly high and often unaffordable costs on the ACA exchanges. There is no acceptable reason that these workers do not have affordable options for health care coverage. With the number of self-employed workers expected to grow, alternatives such as AHPs are essential for these workers to manage the cost of health insurance.¹¹

It is unfortunate that despite the clear benefit that AHPs provide, the Department continues to perpetuate false claims that AHPs offer "skinny coverage." AHPs are not subject to the ACA's individual and small group requirements, as they are considered to be group health plans and consistently treated as such under the ACA. Under the ACA group plan requirements, however, AHPs are required to cover preventative services without cost sharing and are prohibited from implementing any coverage exclusions based on pre-existing conditions. It would be prudent of the Department to remember that plans offered by large employers, which are subject to the applicable ACA group health plan requirements, cover over 103 million American lives.¹²

Given the benefit that AHPs provide to American small businesses and workers, I urge you to promptly rescind the proposed rule. Thank you for your attention to this matter.

Sincerely,



Bill Cassidy, M.D.
Ranking Member
U.S. Senate Committee on Health,
Education, Labor, and Pensions

⁹ Berkowitz et al., *Health insurance coverage and self-employment*, Health Serv Res (Apr. 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7968939/>.

¹⁰ Tolbert et al., *Key Facts about the Uninsured Population*, KFF (Dec. 18, 2023), <https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/>. Amy E. Cha & Robin A. Cohen, *Reasons for Being Uninsured Among Adults Aged 18-64 in the United States, 2019*, Centers for Disease Control and Prevention (Sept. 2020), <https://www.cdc.gov/nchs/products/databriefs/db382.htm>.

¹¹ Elka Torpey & Brian Roberts, *Small-business options: Occupational outlook for self-employed workers*, U.S. Bureau of Labor Statistics (May 2018), <https://www.bls.gov/careeroutlook/2018/article/self-employment.htm>.

¹² 1.5.2. Participants, Beneficiaries, and Enrollees Receiving Mental Health and Substance Use Disorder Treatment, Requirements Related to the Mental Health Parity and Addiction Equity Act, 88 Fed. Reg. 51552 (proposed August 3, 2023) (to be codified at 26 CFR 54, 29 CFR 2590, 45 CFR 146, 45 CFR 147).