

Trump rule would revive pre-existing condition discrimination

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Physicians are all for increasing patient access to health care, but a U.S. Labor Department rule expanding association health plans (AHPs) will do the exact opposite, doctors tell a federal court in an amicus brief.

The Trump administration's rule will undermine the Affordable Care Act's (ACA) reforms by depriving patients of essential care, allowing insurers to discriminate against individuals based on pre-existing health conditions, destabilizing the insurance markets and exposing patients to fraud, physicians told the court.

The AMA has long advocated for health insurance coverage for all Americans, as well as pluralism, freedom of choice, freedom of practice and universal access for patients. Learn more about the AMA vision on health care reform.

"The AMA strongly believes that the progress in expanding meaningful coverage to millions of previously uninsured Americans during the past decade should be maintained, but the AHP rule would reverse these gains," said AMA President Barbara L. McAneny, MD. "The AMA supports vacating the AHP rule" and supports a lawsuit "seeking to preserve federal patient protections that provide a crucial check on the historic problems of underinsurance and unaffordable medical expenses."

The AMA strongly objected to the rule on AHPs when it was proposed. Now the Litigation Center of the American Medical Association and State Medical Societies and the Medical Society of the State of New York (MSSNY) have joined forces to file a friend-of-the-court brief in *State of New York v. U.S. Dept. of Labor*. In the brief, they tell justices that that the rule is "unwise and unlawful."

The lawsuit in the U.S. District Court for the District of Columbia seeks to vacate the Labor Department's June final rule that allows AHPs to offer health insurance that qualifies as large group coverage to all of its employer members.

The new designation means AHPs would no longer need to comply with consumer protections under the current law that ensure health plans provide minimum essential health benefits, including maternity care, prescription medication and mental health and substance-use disorder services. The rule also would eliminate protections against annual and lifetime limits and out-of-pocket expenses.

“MSSNY supports efforts to expand the availability of health insurance through a wide variety of options, including through increased options for employers to band together to obtain insurance coverage for their employees,” said MSSNY President Thomas Madejski, MD. “However, we are concerned that these AHP plans authorized in the federal proposal would not be subject to state regulation and enforcement, which could make it difficult to ensure that patients receive coverage for the care they need and physicians to be timely paid for providing this care.”

Back to days of no maternity care?

Before the ACA, about 30 percent of Americans lacked meaningful health care coverage, nearly 18 percent were completely uninsured, and 12 percent were underinsured, according to the amicus brief. Meanwhile, 75 percent of non-group health plans did not cover delivery and inpatient maternity care and 38 percent did not cover mental health services.

On its face, the regulation says it protects pre-existing condition coverage, but in reality AHPs could change premiums based on factors that are not explicitly defined in terms of health or medical conditions, but ones that track those factors: age, gender, industry or geography.

“Each of those seemingly neutral characteristics can be used to disguise differential treatment based on health status or one’s likelihood of suffering from particular pre-existing conditions,” the brief says. The Blue Cross Blue Shield Association has predicted that AHP premiums for women in their earlier 30s might be more than 30 percent higher than regular rates in individual and small group plans, the brief notes.

Less stable market, potential fraud

As healthier people opt for cheaper AHP plans and leave ACA-compliant plans, the cost for those ACA-compliant plans will rise because fewer healthy people will be there to offset the higher costs of less healthy people, according to the brief.

The Litigation Center and MSSNY told the court that AHPs previously were a way for people to sell phony health insurance, noting that a 2004 Congressional report found that fraudulent AHPs left more than 200,000 policy holders with more than \$252 million in unpaid medical bills between 2000 and

2002.