

Submitted via regulations.gov.

February 20, 2024

The Honorable Julie Su, Acting Secretary
U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue NW
Washington, DC 20210

Re: Proposed Recission of AHP Final Rule, RIN 1210-AC16

Dear Acting Secretary Su:

The American Occupational Therapy Association (AOTA) is the national professional association representing the interests of occupational therapists, occupational therapy assistants, and students of occupational therapy. Occupational therapy services include habilitation, rehabilitation, and the promotion of physical and mental health and wellness for clients with all levels of ability-related needs. We write in support of rescinding the rule entitled “Definition of Employer—Association Health Plans” (the 2018 AHP Rule), which sought to increase access to less comprehensive alternatives to coverage through the Marketplaces created by the Affordable Care Act (ACA) by expanding the availability of association health plans (AHPs).

By treating them as large group plans, which are less regulated under federal law, the 2018 AHP Rule allowed AHPs sold to both small businesses and self-employed individuals (termed working owners in the rule) to avoid the essential health benefits (EHBs) and other ACA market standards that enable people with disabilities, chronic conditions, and other health needs to access a meaningful package of benefits in the individual and small group markets. It encouraged more AHPs to be established by permitting associations to form for the primary purpose of providing health insurance, and by allowing AHPs to come together based not only on a common industry, profession, or trade, but also on a common geographic area. It also broadened access to AHPs by opening membership to working owners without any employees.

If the 2018 AHP Rule had been fully implemented, it could have given some relatively healthy consumers more affordable options, but made coverage less affordable for many others, including AHP enrollees who became underinsured because their plan offered “skinny” coverage and they faced out-of-pocket costs for services they needed but their less comprehensive plans did not cover. Premiums for ACA plans covering the full suite of EHBs would go up as healthier people leave for AHPs, resulting in a sicker risk pool.

In addition, even though the 2018 AHP Rule included nondiscrimination provisions that barred AHPs from conditioning membership, charging higher premiums, or offering different sets of benefits to participating employer-members based on health factors, they could still design plans that discourage less healthy people from joining by excluding certain benefits.

Access to essential health benefits

AOTA has consistently supported policy at the federal and state levels to establish, maintain, and enforce an adequate level of benefits for people who rely on the individual and small group markets for health insurance coverage. By establishing a focused and protective benefit category for rehabilitative and habilitative services and devices in the EHBs, the ACA established a standard of coverage that could meet the needs of people with disabilities and serious health conditions. Occupational therapy practitioners (OTPs)

consistently work with individuals with chronic health conditions who would continuously benefit from adequate coverage, such as people recently diagnosed with diabetes, to receive disease and medication management support.

Habilitative and rehabilitative services can be provided across many settings and serve different therapeutic and functional purposes for clients. Habilitative services support clients in learning or improving their skills, whereas rehabilitative services can help a person get back or restore their skills and functioning that has been lost or impaired due to an injury, illness, or disability.¹ As a rehabilitative service provider, an OTP can support their 60-year-old patient who experienced a stroke to regain the motor skills needed for self-care tasks, including brushing their teeth or combing their hair. A habilitative service provided under an occupational therapy practitioner focuses on skill building. For example, an OTP can assist adults with intellectual and developmental disabilities on prevocational and employment skills or work with a 9-year-old on discovering effective coping strategies for their anxiety.

A 2020 study of silver plans in the ACA Marketplaces found that habilitative and rehabilitative services represented only 1% of the average premium cost (or \$84 annually) and were used by 3% of nongroup enrollees. But if those costs were no longer spread broadly across the individual market, financing that care would cost people who use habilitative and rehabilitative services \$2,530 per year on average.²

AOTA has long been concerned that when the EHBs are not required, rehabilitative and habilitative services and devices will be under covered or not covered, and we have opposed policies designed to circumvent the EHBs and other ACA consumer protections.³

Because fewer people would have access to plans that guarantee meaningful coverage of our members' services, we agree that the 2018 AHP Rule should be rescinded to make it clear that the pathway to AHP formation it created will remain unavailable.

Thank you for considering AOTA's feedback. Please contact lhooper@aota.org with any questions.

Sincerely,



Laura Hooper
Manager, Health Policy



Emily Berlin, OT/s
State Affairs Occupational Therapy Doctorate Capstone Student

¹ Centers for Medicare and Medicaid Services. (n.d.). Glossary of health coverage and medical terms. <https://www.healthcare.gov/sbc-glossart/>

² Blumberg L., & Banthin, J. (2020). The implications of cutting essential health benefits: An update [Health Policy in Brief: An RWJF Collection]. https://www.rwjf.org/en/library/research/2020/11/the-implications-of-eliminating-essential-health-benefits--an-update.html?cid=xem_other_unpd_ini:quickstrike_dte:20201116_des:ehb

³ See H.R. 1628, *American Health Care Act of 2017*. (2017, May 24). Congressional Budget Office. <https://www.cbo.gov/publication/52752>. Rehabilitative and habilitative services are among the services and benefits likely to be excluded if states are allowed to narrow the scope of the EHBs.