

ATTORNEYS GENERAL OF NEW YORK, COMMONWEALTH OF MASSACHUSETTS, DISTRICT OF COLUMBIA, CALIFORNIA, DELAWARE, COMMONWEALTH OF KENTUCKY, MARYLAND, NEW JERSEY, OREGON, COMMONWEALTH OF PENNSYLVANIA, COMMONWEALTH OF VIRGINIA, WASHINGTON

May 13, 2019

Via U.S. Postal Service (First Class Mail)

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

Re: April 29, 2019 Statement Regarding Association Health Plans

Dear Secretary Acosta:

The undersigned State Attorneys General write to express our concern that the April 29, 2019 statement issued by the Department of Labor relating to the U.S. District Court ruling in *State of New York v. United States Department of Labor* is materially incomplete and fails to inform consumers of their legal right to comprehensive coverage.¹

As leading consumer-protection officials and the chief law enforcement officers of our States, we are concerned that the Department's statement is materially incomplete because it does not fully reflect the state of the law after the United States District Court for the District of Columbia vacated the Department's AHP Final Rule² (the "rule") in all material respects. In particular, the Department's statement does not inform consumers that key Affordable Care Act (ACA) requirements—such as the Essential Health Benefits Package³—now apply to individuals and small groups enrolled in AHPs formed under the rule,⁴ even if these benefits were not covered under the AHP's terms.

The Essential Health Benefits Package ensures that consumers have coverage for hospitalization, maternity and newborn care, prescription drugs, treatment for opioid addiction, chronic disease management, and pediatric services.⁵ If AHPs violate ACA requirements, consumers in some states may be denied coverage for crucial services at a time when they need to make a life-or-death medical decision or need vital care for a chronic disease. By failing to state clearly that these requirements now apply to AHPs formed under the rule, the Department's statement fails to fully reflect the state of the law. Moreover, it threatens to impose financial and health consequences on consumers and their families—where they may be dire—instead of insurance companies and commercial AHPs, who are sophisticated entities with counsel and are in the business of bearing such risk.

The Department's announcement of its non-enforcement for an interim period does not change applicable law or relieve AHPs of their legal obligations. Nor does the Department's decision affect other remedies available to enforce the ACA requirements. If the Department does not do so, others may ensure that these plans provide the benefits that consumers are entitled to receive under the law. In just one example, ERISA's civil remedy scheme enables a participant or beneficiary in an ERISA plan to "enforce any provisions of this subchapter," which includes the ACA's provisions incorporated by reference into ERISA.⁶

To protect consumers, we believe the Department's statement should clearly state, up front, what the law plainly requires: that AHPs formed under the now-vacated final rule must meet the ACA's key requirements, including the Essential Health Benefits Package.

We urge you to supplement the Department's statement to fully and clearly reflect the legal obligations of AHPs under the ACA.

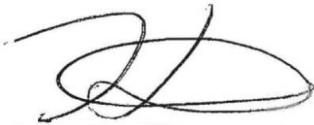
Respectfully submitted,



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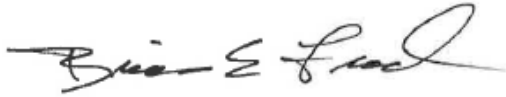
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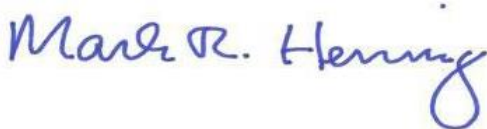
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¹ See *State of New York, et al. v. United States Department of Labor*, 363 F. Supp. 3d 109 (D.D.C. 2019).

² Department of Labor’s Final Rule, Definition of “Employer” under Section 3(5) of ERISA – Association Health Plans, 83 Fed. Reg. 28,912 (June 21, 2018).

³ 42 U.S.C. §§ 300gg-2 and 18022.

⁴ Department of Labor’s Final Rule, Definition of “Employer” under Section 3(5) of ERISA – Association Health Plans, 83 Fed. Reg. 28,912 (June 21, 2018).

⁵ 42 U.S.C. § 18022(C), (D), (E), (F), (I), (J).

⁶ See, e.g., 29 U.S.C. § 1132(a)(3) (providing a right of action “to enforce any provisions of this subchapter”); *id.* § 1185d. Attorney’s fees and costs are available in such an action. *Id.* § 1132(g)(1).