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# CHURCH ALLIANCE

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January 29, 2020

Electronically to <http://www.regulations.gov>

Centers for Medicare & Medicaid Services  
 Department of Health and Human Services  
 Attention: CMS-9915-P  
 P.O. Box 8010  
 Baltimore, MD 21244-8010

## Re: REG-118378-19; Comments on Health Care Transparency in Coverage

To Whom It May Concern:

### I. Introduction

The Church Alliance respectfully submits this letter as a public comment to the Transparency in Coverage Proposed Rule (“Proposed Rule”) published by the Department of Health and Human Services, Department of Labor, and Department of the Treasury (“the Departments”) at 84 Fed. Reg. 65464 on November 27, 2019. The Church Alliance appreciates the opportunity to comment.

The Church Alliance is composed of 35 church benefits organizations (“Church Alliance Organizations”), covering mainline and evangelical Protestant denominations, three Jewish entities, and Catholic schools and institutions. Church Alliance Organizations provide employee benefit plans, including retirement and/or health coverage, to approximately one million participants (clergy, lay workers, and their families), serving over 155,000 churches, parishes, synagogues, and church-associated organizations. These plans (“Denominational Plans”) are defined as “church plans” under section 3(33) of the Employee Retirement Income Security Act (“ERISA”) of 1974 and section 414(e) of the Internal Revenue Code of 1986, as amended.

### II. Background

Church plans and programs have been in existence for many years, with some in existence since the 1700s. Initially, many of these programs were akin to benevolence programs in that they provided benefits to clergy in need. Over the years, these benefit programs expanded to more systematically cover the provision of retirement and welfare benefits for

clergy and lay workers. Denominational Plans are generally maintained by a separately incorporated benefit board designated as the sponsor or administrator of the programs for eligible employees in the denomination. The plans are generally multiple-employer in nature and provide retirement and welfare benefits to thousands (or, in the case of large denominations, tens of thousands) of ministers and lay workers throughout the country. In addition, Denominational Plans cover other church-related organizations (e.g., church-affiliated nursing homes, seminaries, universities, elementary and secondary schools, and social services organizations).

### Special Considerations Relating to Denominational Plans

Denominations are organized to reflect their own theological beliefs and church polity (i.e., the operational and governance structure of the denomination), which gives rise to unique considerations relating to Denominational Plans. Importantly, coverage is consistent with the denomination's beliefs. To the extent that the law might mandate coverage of a benefit that the denomination has determined is inconsistent with its normative values, First Amendment protections may be triggered concerning government's entanglement with religion.

Denominations also have different operational structures. Hierarchical denominations, where the parent church organization sets policy for the entire denomination, operate in a manner similar to large multiple-employer plans. Diocesan, synodical, or presbyterian (local or regional policy-making through representation from area churches) and congregational denominations (voluntary cooperation among autonomous churches, or church conventions or associations) operate with less centralized decision-making. These structures can create different incentives from a plan versus employer perspective, bifurcate functions between the national plan and local employer, and lead to administrative and, as a consequence, compliance challenges.

### **III. Executive Summary**

In the Proposed Rule, the Departments request comments on new proposed disclosure requirements. As explained further below, the Church Alliance urges that church plans (or at least Denominational Plans) be exempted from the public disclosure requirements. If that exemption is not granted, we urge that the special rule to prevent unnecessary duplication be applied to self-insured Denominational Plans in the same way as it is applied to insured plans, so that liability for failure to disclose information be placed on a third-party administrator of any Denominational Plan if they are also an insurer.

### **IV. Disclosure to the Public**

The Preamble to the Proposed Rule states that the purpose of the public disclosure requirements is to assist uninsured individuals and insured individuals in analyzing coverage alternatives and selecting a health plan. However, Denominational health Plans can only offer coverage to a limited segment of the population - eligible employees in the denomination - based on church requirements, beliefs, and polity. Therefore, most of the individuals to which this information would be disclosed would not be eligible to enroll in these plans even if they wished to do so.

Moreover, Denominational health Plans offer coverage to this limited subset of individuals in all or some of the 50 states. Providing the extremely extensive disclosures contemplated by the Proposed Rule, including negotiated rates for every in-network provider for every covered item or service, would place far too large a burden on these plans and their non-profit mission to provide benefits to workers who devote their lives to religious service. The burden far outweighs any benefit derived from the public disclosures when one considers that all of this information would be with the multitude of third-party administrators that are utilized to provide nationwide coverage and provider networks, and that only a very limited segment of the population is even eligible to elect the plans.

### Church Plan Exemption and the First Amendment

When ERISA was enacted, church plans, including Denominational Plans, were exempted unless they affirmatively elected to be subject to it. The exemption was granted to avoid government entanglement with religion in violation of the First Amendment. In exempting church plans, Congress recognized that examining the internal arrangements of churches constituted an unnecessary intrusion into religious activities. It was also based on the recognition that subjecting these plans to the ERISA requirements would be operationally challenging, especially in the multiple employer context of Denominational Plans, and likely impact their ability to provide benefits to clergy and lay workers.

Despite Congress' recognition of the special needs of church plans and the clarification of the applicability of certain federal laws, church plans continue to be subject to legislative and regulatory schemes, sometimes inadvertently, which impact their ability to provide benefits to clergy and lay workers. As the Departments consider new disclosure requirements that would be applicable to Denominational Plans as part of the Proposed Rule, the Church Alliance respectfully urges you to consider the unique needs of Denominational Plans and the critical need to preserve religious liberty in preventing an unconstitutional entanglement of government and religion under the First Amendment.

In recognition of these First Amendment considerations and the limited segment of the population who are eligible to elect church plan coverage, we urge that church plans (or at least Denominational Plans) be exempted from the public disclosure requirements of the Proposed Rule.

### **V. Disclosure to Participants**

Many Denominational health Plans offer nationwide coverage (most often on a self-funded basis), which provides clergy, lay workers, and their families with the comfort and security of career-long, portable, comprehensive, and affordable medical coverage. Many denominations are itinerant, meaning that clergy are often called from one church to another, often in a different part of the country. As workers move, they often are able to seamlessly continue coverage for themselves and their families under the plan without impacting provider networks and existing contributions to annual deductibles and out-of-pocket maximums.

The Proposed Rule requires extensive disclosures regarding cost-sharing information and negotiated rates to plan participants. The Church Alliance supports transparency of coverage for

our plan participants. However, with virtually all of our plans, a wide array of third-party administrators are utilized to provide nationwide coverage and provider networks. As such, the third-party administrator, not the Plan Sponsor or benefits administrator, holds the information to be disclosed under the Proposed Rule.

### Non-Duplication Rule

The Proposed Rule transfers the liability for failure to make proper disclosures to the issuer for insured plans if the parties place the burden for disclosure on the issuer in their contract. The reason for this risk transfer is that the issuer, and not the plan sponsor, has access to the information. However, the Proposed Rule does not allow such a transfer of liability for self-insured health plans. Nevertheless, as discussed above, self-insured Denominational health Plans are often administered and use the provider networks of and process claims through third-party administrators that are also insurance companies. Therefore, the plan sponsor or in-house benefits administrator of a self-insured Denominational health Plan does not have the information requested by the Proposed Rule, much like the plan sponsor of insured health plans.

Accordingly, the Church Alliance respectfully requests that the Departments make available to the plan sponsors of self-insured Denominational health Plans using third-party administrators that are also insurance companies the same risk transferring provisions available to sponsors of insured health plans, so that the parties who have the information are ultimately responsible for its disclosure.

## **VI. Conclusion**

The Church Alliance appreciates the opportunity to comment on the Proposed Rule. As the Departments finalize the Transparency in Coverage regulation, we respectfully request that the Departments consider the special considerations relating to Denominational Plans and our recommendations for accommodating them described in this letter, to prevent our member organizations from being subjected to these burdensome requirements when they do not have the detailed information required to be disclosed. As the Departments navigate these important issues, please consider the Church Alliance as a resource and do not hesitate to contact us if we can be helpful in any way. We appreciate your efforts in helping us ensure that quality health care remains affordable and available to the dedicated ministers and lay employees serving America's communities.

Sincerely,



Karishma S. Page  
Partner  
K&L Gates LLP  
On behalf of the Church Alliance