

Congress of the United States
Washington, DC 20515

April 23, 2024

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

Dear Acting Secretary Su:

We are writing today to express our concerns regarding the emerging practice of "alternative funding programs" (AFPs)¹ and urge the Department of Labor (DOL) to investigate the growing use of AFPs to understand their impact on patients and the health care system and to evaluate options to ensure beneficiary access to affordable medication.

Health plan sponsors, such as employers that choose to fund their own health coverage, are responsible for providing access to affordable and quality health care coverage for their employees. As employers struggle to cover high-cost specialty drugs, we are concerned that AFPs may mislead employers, exacerbate barriers to patient access to specialty medications, and redirect patient assistance dollars towards insured beneficiaries.

Employers are increasingly being advised by third-party vendors to turn to AFPs as a solution for high specialty medication costs. AFPs direct beneficiaries toward patient assistance programs while advising plan sponsors to exclude coverage for specific specialty drugs. This forces the enrollee to navigate the patient assistance program in order to maintain access to their medication. AFPs are operated by private vendors that are separate from the health plan and are not contracted to provide health insurance; yet some of them misleadingly self-describe as "patient advocacy companies."

Unfortunately, when a plan sponsor and AFP intentionally steer beneficiaries towards patient assistance programs it can create significant health risks. Unbeknownst to most employers, help paying for these medications is not guaranteed from either the patient assistance program or the AFP. Patients may have to shoulder the full cost of a drug if they do not enroll in an AFP, and many experience delays in receiving their specialty medication, which can have detrimental health effects. In many cases, these patients are diagnosed with progressive diseases, and this process causes added confusion and stress for individuals already worried about their health.

We, as Members of Congress, are concerned about the growing use of this practice, its impact on patients, and the information being circulated to employers about the ability of AFPs to provide comprehensive drug coverage for their employees. The fact of the matter is this: employers who are looking for affordable health coverage solutions and choose to utilize AFPs

¹ Because this is a newly emerging industry, these vendors go by several different names, including: alternative funding programs, alternative funding vendors, and specialty carve-outs.

are not being given the full picture, and their employees are suffering for it. While there is a wider question to be answered on the affordability of specialty drugs, it is the job of the DOL to ensure safe and honest practices in the private employer-sponsored health insurance sector. Patients, through no fault of their own, are forced to navigate AFPs and patient assistance programs, or confront high out-of-pocket costs that may drive them to forgo their treatment entirely.

We urge the DOL, within its authority, to look into the prevalence of AFPs being used in the employer-sponsored health coverage market. We ask that the DOL answer the following clarifying questions:

1. Does DOL have the existing authority to investigate AFPs?
2. Does DOL have the existing authority to educate employers on bad actors in the commercial health coverage market?
3. Has DOL engaged in this type of education and, if so, in what manner?
4. Are AFPs currently violating federal laws?
5. What impacts are AFPs having on patients' access to specialty medicines?

Additionally, we ask that the DOL provide policy recommendations on how to prevent this predatory practice, ensuring that patients have access to affordable medications, employers can maintain meaningful cost control measures which keep health premiums low, and that employers are fully aware and educated on the impact of their formulary and benefit design. Thank you for your attention to this matter.

Sincerely,



Rick W. Allen
Member of Congress



Lucy McBath
Member of Congress