August 11, 2026

The Honorable Keith Sonderling
Acting Secretary
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

The Honorable Daniel Aronowitz
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: Potential Settlement in *Data Marketing Partnership v. U.S. Department of Labor*

Dear Acting Secretary Sonderling and Assistant Secretary Aronowitz:

The 19 undersigned patient and consumer organizations write to express our deep concern regarding reports that the Department of Labor may be considering a settlement in *Data Marketing Partnership v. U.S. Department of Labor*. We respectfully urge the Department to reject any settlement that would legitimize or recognize this or any other "partnership" arrangements under the Employee Retirement Income Security Act (ERISA), which would pave the way for these entities to evade longstanding federal and state regulation of health insurance.

Our organizations have monitored these arrangements, and their many iterations, for years. We have consistently raised concerns with federal and state policymakers and worked with regulators to strengthen consumer protections. Several of our organizations also filed an amicus brief--alongside other consumers advocates, state officials, the National Association of Insurance Commissioners, and the Blue Cross Blue Shield Association—in support of the Department in this litigation and in defense of your prior advisory opinion that made clear that such arrangements are not governed by ERISA and cannot be used to circumvent the rules governing the individual market. While the names and organizational structures have evolved over time, their underlying objective has remained remarkably consistent: to create a pathway through which entities may market health coverage while avoiding the consumer

protections, benefit standards, financial obligations, and market rules that Congress and the states have established to protect consumers.

Although this litigation involves two specific entities, we are concerned that any settlement could extend far beyond the parties involved. In particular, a settlement that recognizes these arrangements as legitimate single-employer ERISA-covered plans could create a roadmap for similar entities across the country, significantly undermining both state regulatory authority and decades of bipartisan efforts to promote stable, well-functioning health insurance markets.

Our concerns are rooted not only in regulatory integrity but, more importantly, in the real-world consequences for patients and consumers.

First, consumers enrolled in these arrangements may lose important financial and patient protections that Congress and the states have deliberately established. If these products are treated as single-employer ERISA plans, they can avoid many of the standards that apply to coverage sold in the individual and small-group markets, including requirements related to essential health benefits, medical loss ratio standards, and other critical consumer protections. As representatives of patients, we know that people living with serious and chronic illnesses depend upon comprehensive benefits, robust prescription drug coverage, predictable cost-sharing, confidence that their medical claims will be paid, *and* meaningful regulatory oversight. Products that operate outside these protections place consumers at greater financial and medical risk while creating significant confusion about what coverage actually includes. As discussed in the amicus brief in 2021, "Those left behind by Data Marketing and its forthcoming imitators will see further premium increases that the otherwise-applicable state and federal laws were put in place to avoid. Some will be priced out of health insurance entirely. At the same time, there is no guarantee that Data Marketing's own policy holders will be better off." These concerns remain just as true today, especially with millions more people uninsured and in the midst of a health care affordability crisis.

Second, these arrangements threaten to destabilize state insurance markets by siphoning younger and healthier individuals away from the regulated individual market. The Affordable Care Act's market reforms rely upon broad participation in a common risk pool to ensure that individuals with significant health needs can obtain affordable, comprehensive coverage. Parallel markets that selectively attract healthier enrollees inevitably leave behind a sicker risk pool, resulting in higher premiums and reduced affordability for individuals and families who rely on ACA-compliant coverage.

Further, many consumers do not knowingly choose these arrangements over comprehensive health insurance. Instead, they are enrolled through misleading online marketing, lead-generation websites, and sales practices that obscure the true nature of the coverage being offered. A Bloomberg investigation found that consumers searching online for comprehensive health insurance were often routed through marketing entities presenting themselves as enrollment assistance services, only to be steered toward products that are not ACA-compliant and lack the consumer protections people reasonably expect when shopping for health insurance. These findings are consistent with multiple secret shopper surveys, reports from the Government Accountability Office, and evidence presented in the amicus brief filed by members of our coalition in *Data Marketing Partnership v. U.S. Department of Labor*. Together, these sources document a pattern of marketing materials and enrollment practices that blur the distinction between comprehensive health insurance and limited-benefit arrangements. As a result, consumers—particularly those with limited health insurance literacy or urgent medical needs—

may believe they are enrolling in comprehensive coverage when, in reality, they are purchasing products that leave them exposed to significant financial and medical risk.

Lastly, any settlement would substantially weaken states' longstanding authority to regulate their health insurance markets by creating regulatory loopholes. State insurance departments play a critical role in overseeing insurers' financial solvency, reviewing policy forms, enforcing consumer protections, monitoring marketing practices, and responding to complaints from consumers. These responsibilities are foundational to protecting patients and ensuring stable insurance markets. A settlement that permits entities to sidestep this regulatory framework would undermine these efforts while encouraging additional organizations to pursue similar dubious arrangements.

Our organizations recognize the important role that the Department plays in protecting consumers and helping ensure that employer-sponsored health coverage works as it is supposed to for millions of Americans. Nothing in our comments should be interpreted as questioning that framework. Rather, our concern is with efforts to try to extend ERISA to arrangements that bear no resemblance to true employment relationships and instead appear designed to drive profit for its owners by marketing health coverage to individuals and avoiding well-established state and federal insurance regulations.

Patients with serious and chronic health conditions cannot afford yet another generation of products that promise affordable coverage while weakening the protections they depend upon. Nor can regulated insurance markets continue to absorb the consequences of arrangements that selectively remove healthier risks while shifting costs onto everyone else. Maintaining strong federal and state oversight is essential to protecting consumers, preserving stable insurance markets, and ensuring that comprehensive coverage remains available and affordable.

For these reasons, we respectfully urge the Department not to enter into any settlement that legitimizes these arrangements or otherwise weakens longstanding state oversight of health coverage. We instead encourage the Department to continue defending the established ERISA regulatory framework and identifying additional opportunities to protect consumers, support market stability, and improve health care affordability.

Thank you for your consideration of our views. We appreciate the Department's longstanding commitment to protecting workers, consumers, and beneficiaries. If you would like to discuss the contents of this letter further, please contact Katie Berge, Senior Director of Federal Affairs at Blood Cancer United at katie.berge@bloodcancerunited.org.

Sincerely,

AiArthritis
American Cancer Society Cancer Action Network
American Kidney Fund
American Lung Association
Arthritis Foundation
Blood Cancer United
Cancer Nation
Coalition for Hemophilia B
Crohn's & Colitis Foundation
Cystic Fibrosis Foundation
Legal Action Center
Muscular Dystrophy Association
National Bleeding Disorders Foundation
National Multiple Sclerosis Society
National Patient Advocate Foundation
National Psoriasis Foundation
Pulmonary Hypertension Association
The AIDS Institute
ZERO Prostate Cancer