

March 5, 2018

R. Alexander Acosta
Secretary
Dept. of Labor
200 Constitution Ave.
Washington, DC 20210
Attn: Definition of Employer-Small Business Plans
RIN 1210-AB85

Dear Secretary Acosta:

On behalf of the American Thoracic Society, thank you for the opportunity to provide comments on the Department of Labor's proposed rule: 29 CFR Part 2510 RIN 1210-AB85. The ATS is a medical professional organization of 16,000 members who work to prevent, detect, treat and cure respiratory, sleep and critical care related illnesses through research, clinical care and advocacy. Ours is a population that includes millions of people across the US with respiratory illnesses such as asthma, COPD, pulmonary fibrosis, pneumonia, and obstructive sleep apnea. Our patients need continuous, affordable health coverage, including access to specialty care and comprehensive diagnosis, treatment and prevention services. The ATS is gravely concerned that some of the proposals under this proposed rule may result in some medically necessary treatments and health care services becoming unaffordable for our patients with chronic respiratory, critical illness and sleep conditions. We have the following concerns with this rule:

The Employee Benefits Security Administration under the Department of Labor proposed ruling 29 CFR Part 2510 RIN 1210-AB85 would allow more businesses and trade groups and additionally, for the first time, individuals, to buy health care in Association Health Plans (AHP)'s. Such associations would be permitted to purchase healthcare outside of the Affordable Care Act (ACA) state health insurance marketplaces. The ATS understand that the ability to form AHP's may bring flexibility and reduced health care costs to some small business and individual consumers, but we are deeply concerned about the rule's promotion of AHP's and their proposed exemption from current ACA consumer protections, specifically the Essential Health Benefits (EHB).

Essential Health Benefits

The ATS is very concerned that under the proposed rule, AHP's would not be required to provide all of the ACA's 10 EHB coverage categories. People with chronic respiratory conditions, critical illnesses and sleep disorders and other vulnerable populations require access to full insurance coverage of comprehensive diagnosis, treatment and prevention services across all of the ACA's 10 essential health benefit categories. For example, chronic disease management, one of the ACA's



required EHB's is critical to controlling and preventing dangerous and costly exacerbations of both COPD and asthma of moderate to severe asthma and COPD.

The rule's proposal to permit variation in benefits covered by AHP's will promote highly varied and potentially inadequate benchmark standards across the country that may not include the full range of health care services that people with chronic respiratory, critical illnesses and sleep disorders need. We are gravely concerned that this proposal to allow broad variation in EHB will significantly affect health care access for some children, adolescents and adults. Skimpier health plans will result in more untreated, exacerbated illness, with more children and adults unable to attend school or work and higher long-term health care costs.

Tobacco Cessation Benefits

Another important EHB category that we are concerned that some AHP's would eliminate is prevention services. Tobacco cessation services are currently a covered benefit under the ACA's preventive services benefit category. Cigarette smoking is the leading cause of illness and death in the U.S., responsible for one in five deaths. Open access to preventive tobacco cessation services will reduce the incidence and severity of chronic diseases associated with smoking, such as COPD and lung cancer, and reduce future health system costs. In order to reach the goal of reducing tobacco use in the U.S., health plans must cover a full range of services for treatment of tobacco dependence, ranging from all pharmacological therapies approved by the Food and Drug Administration (FDA), to individual, group and telephone counseling services through specific inclusion of these services in plan benefits.

The ATS urges the Department to require that AHP's cover tobacco cessation treatment using the Federal Employees Health Benefits Program (FEHB) as the benchmark benefit, including duration of therapy, in accordance with the 2008 U.S. Public Health Service guideline, *Treating Tobacco Use and Dependence* and the U.S. Preventive Services Task Force (USPSTF) 2015 Recommendation.ⁱ To ensure full access for low-income enrollees, tobacco cessation benefits must be provided without copays, deductibles or limits.

Age, Gender and Geographic Location

The ATS is also concerned by the rule's proposal to allow AHP's to charge consumers higher premiums based on gender, a departure from the ACA's prohibition against gender rating. The ATS opposes any proposals that would make healthcare more expensive for individuals based on their gender.

Adverse Selection and Market Destabilization

In addition to watering down EHB benefit packages and potentially increasing costs for certain health care services and treatments, an end result of these proposals could be more adverse selection in state insurance markets that could extend more broadly across the U.S, destabilizing all insurance markets. In states where more basic health benchmark plans are available, young, healthy consumers could move to the cheapest plans, while patients with expensive chronic conditions, such as COPD and lung cancer will have to buy much more insurance because they have no other choice. The end result could be adverse selection and race to the bottom spirals that ultimately cause insurance markets to



collapse, leaving people with chronic conditions unable to afford health insurance coverage at all and without access to needed care - an unacceptable situation.

Small businesses with healthier than average workers would be incentivized to join Association Health Plans that (a) offer lower than average monthly premiums to small businesses whose workers are healthier than average and (b) structure their covered benefits to make it more difficult to access expensive, specialty treatments. These incentives would induce adverse selection such that small businesses with sicker than average workers would find it difficult to obtain affordable premiums. The small premium savings accruing to small businesses with healthier workers would be off-set by potential burdens on individual workers within these firms who have or develop a serious chronic disease and lack access to effective, affordable treatments.

The ATS appreciates the opportunity to comment on this important rule and welcomes all other opportunities to work with the Department to ensure access to affordable and appropriate health insurance coverage for all Americans. The ATS is gravely concerned that under the current proposed rule, our patients would be at serious risk of facing significant financial barriers to access to needed healthcare for these vulnerable patients in the form of increased and unaffordable premium and cost sharing costs.

Sincerely,



Marc Moss, M.D.
President
American Thoracic Society

ⁱ <https://www.opm.gov/healthcare-insurance/special-initiatives/quit-smoking/>

