AMERICAN LUNG ASSOCIATION®

Harold P. Wimmer
National President and CEO

March 6, 2018

The Honorable Alexander Acosta
Secretary
U.S. Department of Labor
200 Independence Avenue, NW
Washington, DC 20210

Re: RIN 1210-AB85; Definition of "Employer" Under Section 3(5) of ERISA– Association Health Plans

Dear Secretary Acosta:

The American Lung Association appreciates the opportunity to submit comments on the proposed rule Association Health Plans (AHPs).

The American Lung Association is the oldest voluntary public health association in the United States, currently representing the 33 million Americans living with lung diseases including asthma, lung cancer and COPD. And as such, the Lung Association is committed to ensure all patients have access to quality and affordable healthcare and are treated with guidelines-based care.

In March of 2017 the Lung Association committed to a set of healthcare principles (see Appendix A). The principles state that any changes to the healthcare system must achieve healthcare that is affordable, accessible and adequate for patients. Unfortunately, the proposed rule on AHPs would jeopardize access to healthcare that is affordable, accessible and adequate for lung disease patients. AHPs have a history of providing inadequate care to patients. If the Department of Labor (DOL) wishes to change the rules governing AHPs, additional patient protections, including coverage of the Essential Health Benefits, should be required. However, the proposed rule as currently written does not protect patients, and the American Lung Association requests that the Department rescind the proposed rule.

The Lung Association along with 14 patients organizations have outlined major concerns with the proposed rule in the attached comments (see Appendix B), however the Lung Association is a unique position to comment in more detail the issues described below.

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Preventive Services

The Lung Association appreciates that AHPs would be required to cover preventive services with no cost-sharing. Current law requires most private health plans to cover preventive services without cost-sharing, including co-pay, co-insurance and deductible. The defined preventive services are any treatment receiving an "A" or "B" from the United States Preventive Services Task Force (USPSTF) and any immunization having a recommendation from the Advisory Committee on Immunization Practices.

These preventive services save both money and lives and are particularly important for lung disease patients. Current preventive services include lung cancer screenings for people at high-risk for lung cancer, which allow lung cancer to be discovered earlier, at a more treatable stage. Lung cancer is currently the leading cancer killer for both men and women in the United States, and the expansion of access to this important screening can save lives. Additionally, up to 50,000 adults die each year from vaccine-preventable diseases.[1] Coverage of preventive services removes the barrier of cost-sharing to getting the influenza, pneumococcal and other vaccines, saving both lives and money. However, while coverage of preventive services at no cost-sharing is critical for lung disease patients, these alone are not adequate coverage, and we again urge DOL to include coverage of all 10 essential health benefits in this rule to ensure that patients have access to all of the services, medications and treatment that they need.

Tobacco Surcharges

The American Lung Association opposed section 2701 of the Affordable Care Act, which allows insurance plans in the individual and small group markets to charge tobacco users up to 50 percent more in premiums than non-tobacco users. This policy will herein be referred to as the "tobacco surcharge."

A health insurance surcharge for tobacco use and what is for many, a chronic disease of tobacco addiction, is likely to produce adverse consequences. There is little evidence that financial incentives or disincentives through insurance premiums change individual behavior. In fact, recent studies from Health Affairs[2] and the Center for Health and Economics Policy at the Institute for Public Health at Washington University[3] have suggested that tobacco surcharges do not increase tobacco cessation. The studies also have data suggesting tobacco users eligible for Marketplace or exchange health plans forgo health insurance rather than paying the surcharge. Tobacco users often have expensive comorbidities. Charging a tobacco surcharge could cause those enrollees to go without coverage and access to preventive care (including tobacco cessation treatments), allowing comorbid health conditions to worsen. This could result in more expensive healthcare being required later on.

Tobacco surcharges are an unproven theory to improve public health – in contrast to several thoroughly tested, evidence-based interventions and policies that are proven to reduce smoking consumption and prevalence. These tools include offering a well-promoted comprehensive tobacco cessation benefit without barriers.

While the Lung Association recognizes tobacco surcharges are legally allowed, currently states are also able to limit or prohibit the surcharge in their state. The AHP rule, if enacted, will take enrollees out of marketplace coverage – coverage that is regulated by the state – and put them in ERISA regulated plans. This will take away the important role of state in regulating health insurance.

The Lung Association also requests DOL hold public hearings on this rule prior to any promulgation of a final rule. This proposed rule on AHPs, if implemented, would impact patients and the public at large with regards to the range of health benefits offered. It is important DOL has ample opportunity to hear from patient voices on access to quality and affordable healthcare. A public hearing, while not required, would provide an additional avenue to hear from patients on how they could be impacted by the proposed rule.

The American Lung Association appreciates the opportunity to submit comments on this important rule and urges the Department of Labor to rescind this proposed rule. As outlined in the attached coalition comments, if proposed, the rule would undermine marketplace stability, jeopardizing access to quality, affordable healthcare for lung disease patients.

Sincerely,

Harold P. Wimmer
National President and CEO

CC: Ms. Jeanne Klinefelter Wilson
Deputy Assistant Secretary for Policy
Employee Benefits Security Administration

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[1] Weinberger B, Herndler-Brandstetter D, Schwanninger A, et al. Biology of immune responses to vaccines in elderly persons. Clin Infect Dis. 2008;46:1078-1084.
[2] Friedman, A.S., Schpero, W. L., Busch, S.H. Evidence Suggests That The ACA's Tobacco Surcharges Reduced Insurance Take-Up and Did Not Increase Smoking Cessation. Health Aff 2016; 35:1176-1183. doi: 10.1377/hlthaff.2015.1540 accessed at: http://content.healthaffairs.org/content/35/7/1176.abstract
[3]Monti, D., Kusemchak, M., Politi, M., Policy Brief: The Effects of Smoking on Health Insurance Decisions Under the Affordable Care Act. Center for Health and Economics Policy Institute for Public Health at Washington University. July 2016. Accessed at: https://publichealth.wustl.edu/wp-content/uploads/2016/07/The-Effects-of-Smoking-on-Health-Insurance-Decisions-under-the-ACA.pdf