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December 14, 2018

The Honorable Alexander Acosta
Secretary
US Department of Labor
Attn: RIN 1210-AB88
200 Independence Ave, NW
Washington, DC 20210

Submitted Electronically

Re: Definition of “Employer” under Section 3(5) of ERISA – Association Retirement Plans and Other Multiple-Employer Plans (RIN 1210-AB88)

Dear Secretary Acosta:

On behalf of our more than 100,000 member physical therapists, physical therapist assistants, and students of physical therapy, the American Physical Therapy Association (APTA) is pleased to submit comments on the Definition of “Employer” under Section 3(5) of ERISA – Association Retirement Plans and Other Multiple-Employer Plans proposed rule (proposed rule). The mission of APTA is to build a community to advance the physical therapy profession to improve the health of society. Physical therapists play a unique role in society in prevention, wellness, fitness, health promotion, and management of disease and disability by serving as a dynamic bridge between health and health services delivery for individuals across the age span. While physical therapists are experts in rehabilitation and habilitation, they also have the expertise and the opportunity to help individuals improve overall health and prevent the need for avoidable health care services. Physical therapists’ roles may include education, direct intervention, research, advocacy, and collaborative consultation. These roles are essential to the profession’s vision of transforming society by optimizing movement to improve the human experience.

The physical therapy profession is committed to the restoration, maintenance, and promotion of optimal physical function. Physical therapists are licensed health care professionals who diagnose and manage movement dysfunction and enhance physical and functional status across all age populations. Physical therapists also help patients maintain health by preventing further deterioration or future illness. Maintaining access to physical therapy services is integral to ensuring patients’ recovery and preventing further deterioration of

patients' conditions. Physical therapists practice in wide variety of settings, from large hospitals to private practice and even as solo practitioners. Accordingly, nearly all aspects of labor regulation, and especially those affecting small businesses, affect physical therapists and consequently their patients.

APTA supports the proposal to expand the definition of *employer* under ERISA in order to allow employer groups and associations to establish individual account “employee pension benefit plans” within the meaning of ERISA section 3(2). Allowing employers to band together to create retirement plans for their employees will decrease the administrative burden and disproportionately high cost that small businesses face in offering benefits to their employees. Too few Americans have the opportunity to save for their future, and increasing the availability of these plans will help to alleviate this problem.

However, while we generally support the proposed rule, we wish to draw a clear distinction between this rule and the now finalized rule Definition of “Employer” Under Section 3(5) of ERISA—Association Health Plans (AHPs). We recognize the parallel nature of these 2 rules but wish to clarify for the agency why we support the rule concerning retirement accounts and not the rule concerning AHPs. Most significantly, the rule on AHPs creates an extreme disruption to an existing public mechanism for obtaining health insurance: the marketplaces of the Affordable Care Act (ACA). Expanding the availability of these alternative health plans threatens the availability of coverage for persons who are not given the opportunity to join an AHP. Conversely, there is no marketplace for retirement plans. Accordingly, allowing associations to develop and maintain these plans for their members causes no harm to persons unable to participate in such plans. Additionally, while the retirement plans under this rule will still be subject to consumer protections under ERISA, AHPs are not subject to the consumer protections in the ACA. Accordingly, while consumers will benefit from increased access to regulated, dependable retirement accounts, they will be subject to less comprehensive, financially risky health plans.

Conclusion

APTA is committed to maximizing the potential of providers by reducing regulatory burdens and increasing fair economic opportunities. APTA thanks the Department of Labor for the opportunity to comment on the proposed rule. We look forward to working with the department to ensure that small businesses and providers have the resources they need to thrive and positively change the lives of their patients. Should you have any questions regarding our comments, please contact Kate Gilliard, senior regulatory affairs specialist, at 703/706-8549 or kategilliard@apta.org.

Sincerely,



Sharon L. Dunn, PT, PhD
Board-Certified Orthopaedic Clinical Specialist
President

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