

March 6, 2018

The Honorable R. Alexander Acosta  
Secretary, U.S. Department of Labor  
200 Constitution Ave NW  
Washington, DC 20210

**Re: Definition of Employer – Small Business Health Plans RIN 1210-AB85**

Dear Secretary Acosta:

The American Occupational Therapy Association (AOTA) is the national professional association representing the interest of more than 213,000 occupational therapists, occupational therapy assistants, and students of occupational therapy. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability. I am writing to offer AOTA's comments on the Department of Labor proposed rule on association health plans (AHPs) and the definition of "employer" under section 3(5) of ERISA.

*Access to Essential Health Benefits*

AOTA's principles for health care reform include ensuring meaningful coverage and benefits, so people who purchase health insurance through an employer, the Marketplace, or an AHP are able to receive necessary services to live healthy, independent, fulfilling lives. We have consistently supported policy at the federal and state level to establish, maintain, and enforce an adequate level of benefits for people who rely on the individual and small group markets for health insurance coverage. AOTA is concerned about efforts to scale back or eliminate the coverage levels and benefits guaranteed for individuals and small groups today.

We support the comprehensive benefits package established by the essential health benefits (EHBs), including rehabilitative and habilitative services, mental health and substance use disorder services, and preventive and wellness care, which has expanded coverage of occupational therapy services for consumers in the individual and small group markets. Without this guarantee, fewer people could expect to be covered for services such as an occupational therapy practitioner helping a little girl who had a stroke in utero learn to groom and dress herself, a man in his twenties learn to

incorporate diabetes management into his daily routines, or a new mother with multiple sclerosis learn to safely hold and feed her child.

### *Expanding Access to AHPs Treated as Large Group Plans*

By treating AHPs as large group plans under federal law, the proposed rule would allow AHPs sold to both businesses and self-employed individuals (termed working owners in the proposed rule) to avoid many of the ACA market standards that enable people with disabilities, chronic conditions, and other health needs to join the individual market and access a meaningful package of benefits designed to cover services they need. We support that, under the proposed rule, the Department bars AHPs from conditioning membership, charging higher premiums, or offering different sets of benefits to participating employer-members based on health factors. However, we believe these nondiscrimination provisions will not be sufficient to prevent AHPs from drawing healthy groups and individuals away from the Marketplaces. Associations could design plans that discourage less healthy people from joining by excluding important benefits. They could potentially engage in discriminatory rating practices that approximate health status rating since they would be allowed to charge higher premiums to women, older people, or members of certain professions.

AHPs could give some of the consumers who don't qualify for Marketplace subsidies more affordable alternatives than are currently available to them, but make coverage less affordable for many others. Some of these consumers will face unexpected out-of-pocket expenses for needed health care services, like therapy services that help attain or regain skills and functioning, which are not covered by their less comprehensive plans. Others, who remain in the ACA-compliant market to access comprehensive coverage, will face higher premiums as healthier people leave the risk pool.

For these reasons, we hope the Department will not move forward with the proposed rule. If you do move forward, the Department should require AHPs to cover EHBs and the same consumer protections as Marketplace plans.

### *Oversight of AHPs*

AOTA is opposed to proposals that would erode consumer protections by allowing AHPs to escape state regulation of benefit standards, marketing, and rating practices. If the Department implements the changes in the proposed rule, the final rule should clarify your intended role for state regulation and explain what federal regulation will entail, including whether you will overrule state laws and regulations that are found to be inconsistent with the new interpretation of ERISA. We urge the Department to uphold states' ability to enforce consumer protections in the markets they know best. We hope

you will decline to impose a national standard meant to preempt more protective state laws and regulations and instead affirm that states can apply the EHBs and other consumer protections to AHPs.

Thank you for considering AOTA's comments. If you have questions, please contact Laura Hooper at (240) 752-1168.

Sincerely,

A handwritten signature in cursive script that reads "Laura Hooper". The ink is black and the signature is fluid and legible.

Laura Hooper  
Manager, Health Policy