Tuesday, March 6, 2018

Jeanne Klinefelter Wilson
Deputy Assistant Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

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

Dear Secretary Wilson,

On behalf of the American Society of Addiction Medicine (ASAM), a national medical specialty society representing more than 5,100 physicians and allied health professionals who specialize in the treatment of addiction, we are pleased to offer comments on the proposed rule by the Department of Labor (hereinafter referred to as "the Department") to modify the requirements for association health plans (AHPs). While we appreciate the Department's effort to offer additional health insurance options, we are concerned that the proposed rule may inadvertently limit access to care and increase health insurance costs for many individuals with chronic diseases, including addiction.

As you are aware, the opioid epidemic continues to claim many lives. In 2016 alone, more than 42,000 people died from an opioid overdose.[1] Additionally, some states such as Ohio, West Virginia, and Pennsylvania experienced statistically significant increases in their death rates from 2015 to 2016 due to rapid increases in opioid overdose deaths.[2] Despite the astounding acceleration in the death rate from opioid overdoses, and estimates from the Substance Abuse and Mental Health Services Administration (SAMHSA) that almost 2.1 million suffered from an opioid use disorder (OUD), only 1 in 5 individuals received treatment for their OUD in 2016.[3]

In fact, among those individuals who did not receive treatment, the lack of health care coverage, treatment cost, and absence of coverage for substance use disorder (SUD) were the primary reasons for not receiving treatment.[4] Given the scale of the opioid epidemic, it is vitally important that policymakers and regulators remove such barriers to treatment of addiction. However, ASAM is concerned that this proposed rule would actually increase barriers to affordable health insurance and consequently, access to treatment of addiction.

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This proposed rule change would allow smaller employers to band together and effectively create large group health insurance plans that would be regulated by standards for plans in the large group market. While ASAM appreciates the Department's attempt to create additional health insurance options, we are very concerned that these changes will effectively allow these new AHPs to effectively avoid the essential health benefit (EHB) requirements of the Patient Protection and Affordable Care Act (PPACA) that require individual and small group market plans to offer SUD treatment as one of the ten benefits without annual or lifetime limits.

The American Academy of Actuaries and others have noted that because AHPs would not be subject to EHB requirements and would be allowed to have more flexibility in their plan rating factors, benefits, cost-sharing provisions, and premiums – these plans would be more affordable and attractive to healthier populations and those without chronic diseases such as addiction. The Department even acknowledges such by stating that AHPs could offer "less comprehensive and hence, more affordable coverage."[5] If healthier populations in the individual and small group market begin to exit en masse in favor of AHPs, there is a danger that this reaction will further destabilize the insurance market. In turn, individuals who need more comprehensive services, such as those suffering from OUD will be left in a single, high-risk pool with less affordable coverage.

While the Department notes that many insurers offer treatment for SUD in large group plans, there are no requirements for them to do so. In fact, SAMHSA notes that private insurers spend less than 1% on SUD care.[6] Without a requirement for AHPs to offer benefits akin to EHBs, including addiction treatment services, this rule may jeopardize the ability of individuals with chronic diseases to get the care they need. The Department also notes that access to health insurance marketplace plans are currently limited and that in response, some individuals have less affordable plans. Given the Department's acknowledgment that the "nature and magnitude of both positive and negative effects [of AHPs on marketplace plans] are uncertain,"[7] we urge the Department to strongly consider the potential impacts on individuals with chronic diseases in the individual and small group markets before moving forward with any final rules that establishes AHPs.

Finally, as the Department considers this proposed rule, ASAM urges regulatory authorities to consider policies that expand access to quality, affordable healthcare for patients OUD. Specifically, the Department should consider policies for third-party payers that make nondiscriminatory coverage available to group health insurance purchasers at levels that are both reasonable and equitable.[8] Coverage should also include nondiscriminatory reimbursement for addiction treatment that is on parity with reimbursement for other health care treatments, in commercial and government-sponsored insurance plans, be they traditional (indemnity-type) plans, prepaid (HMO-type) plans, or self-insured plans.[9]

While the Department has proposed nondiscrimination language in this regulation, the proposed rule, as stated in the notice of rulemaking, would allow AHPs to offer cheaper and less comprehensive health insurance coverage. Should plans decide to cover medications and not behavioral therapies, or vice versa, it could disproportionately impact individuals with an OUD who often need treatment with medication in conjunction with behavioral therapy. It is vitally important that individuals have access to comprehensive care that encompasses consultation and evaluation, as well as treatment in inpatient, residential, outpatient, and partial hospitalization settings, as indicated by the patient's individual clinical condition.[10]

ASAM thanks the Department for the opportunity to comment on these proposed regulations. We welcome further engagement with the Department of Labor regarding this proposed rule to ensure that individuals with chronic diseases such as addiction have access to affordable health

care. If you have any questions, comments, or concerns, please contact Corey Barton, Manager, ASAM Private Sector Relations at 301-547-4016 or via email at cbarton@asam.org.

Sincerely,

Kelly J. Clark, MD, MBA, DFASAM
President, American Society of Addiction Medicine

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[1] Hedegaard H, Warner M, Miniño AM. Drug overdose deaths in the United States, 1999–2016. NCHS Data Brief, no 294. Hyattsville, MD: National Center for Health Statistics. 2017/ CDC. Wide-ranging online data for epidemiologic research (WONDER). Atlanta, GA: CDC, National Center for Health Statistics; 2016. Available at http://wonder.cdc.gov

[2] Ibid

[3] Park-Lee, E., Lipari, R. N., Hedden, S. L., Kroutil, L. A., & Porter, J. D. (2017, September). Receipt of services for substance use and mental health issues among adults: Results from the 2016 National Survey on Drug Use and Health. NSDUH Data Review. Retrieved from https://www.samhsa.gov/data/

[4] Ibid

[5] Definition of "Employer" Under Section 3(5) of ERISA—Association Health Plans, 83 Fed. Reg. 4 (January 5, 2018) (to be codified at 29 C.F.R. pt. 2510).

[6] Substance Abuse and Mental Health Services Administration. Behavioral Health Spending and Use Accounts, 1986–2014. HHS Publication No. SMA-16-4975. Rockville, MD: Substance Abuse and Mental Health Services Administration; 2016.

[7] Definition of "Employer" Under Section 3(5) of ERISA—Association Health Plans, 83 Fed. Reg. 4 (January 5, 2018) (to be codified at 29 C.F.R. pt. 2510).

[8] American Society of Addiction Medicine. Public Policy Statement on Third-Party Coverage For Addiction Treatment. Rockville, MD: American Society of Addiction Medicine; 1990. https://www.asam.org/advocacy/find-a-policy-statement/view-policy-statement/public-policy-statements/2011/12/15/third-party-coverage-for-addiction-treatment

[9] Ibid

[10] Ibid