



December 17, 2010

**VIA ELECTRONIC FILING – [www.regulations.gov](http://www.regulations.gov)**

The Honorable Kathleen Sebelius  
Secretary  
United States Department of Health and Human Services  
200 Independence Avenue SW  
Washington, DC 20201

The Honorable Hilda L. Solis  
Secretary  
United States Department of Labor  
200 Constitution Ave., NW  
Washington, DC 20210

The Honorable Timothy F. Geithner  
Secretary  
United States Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

**Re:** Amendment to Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Plan Under the Patient Protection and Affordable Care Act,  
HHS File Code OCIIO-9991-IFC2; DOL File No. RIN 1210-AB42;  
IRS File No. REG-118412-10

Dear Secretaries Sebelius, Solis and Geithner:

The Council of Insurance Agents & Brokers (CIAB) appreciates this opportunity to provide comments on the Departments' Amendment to the Interim Final Rule (IFR) relating to status as a grandfathered plan under the Patient Protection and Affordable Care Act (PPACA).<sup>1</sup> As the premier association for commercial insurance and employee benefits intermediaries in the United States, CIAB represents leading commercial insurance agencies and brokerage firms, with members in over 3,000 locations placing more than \$200 billion of U.S. insurance products and services, including group health insurance. Our members help employers provide their

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<sup>1</sup> Amendment to the Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Plan Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 70114 (Nov. 17, 2010) (hereafter, "Amended Grandfather IFR").

employees with the health coverage they need at a cost they can afford, serving tens of thousands of employer-based health insurance plans covering millions of American workers. As such, our membership has a thorough understanding of the group health insurance market, and has had a unique opportunity to observe the challenges group health plans have faced thus far in the PPACA implementation process.

In our comments on the Grandfather IFR,<sup>2</sup> we focused on the need to preserve healthy competition among carriers serving grandfathered group health plans, and urged the Departments to eliminate the provision in the IFR precluding insured group plans from retaining grandfathered status if they simply changed health insurance carriers. We commend the Departments for amending the Grandfather IFR to adopt this recommendation, as we believe this change will better enable insured plans to shop for the best coverage for their employees rather than locking them in to particular coverage with a particular carrier. We believe this added flexibility will also foster more positive incentives for carriers to offer competitive options for group health plans in terms of cost and service.

Our members are concerned, however, that the benefits of this judicious modification to the Grandfather IFR will be diminished by the fact that the modification is only prospective, applicable to carrier or policy changes that are effective beginning on the date the Amended Grandfather IFR was publicly released, November 15, 2010. Thus, if a grandfathered insured plan changed carriers or policies with the new coverage effective prior to November 15, 2010, that plan could not benefit from the rule change.

The creation of two separate grandfather standards upon this basis is inequitable. The inequity is especially acute in situations where carriers withdrew from markets leaving employers with no choice but to change carriers in order to maintain coverage for their employees (or other situations where employers were effectively compelled to make involuntary carrier or policy changes). In such cases, the prospective character of the amended rule leads to particularly harsh results by forcing plans to forego the choice of maintaining grandfather status because of two factors outside their control – the fact that circumstances required a change in carrier or policy, and the timing of the Departments’ decision to modify the rule. Insured plans do not regard the decision to forego grandfather status lightly because significant considerations must be balanced, not the least of which will be the need to perform the complex, potentially costly annual non-discrimination testing now required for non-grandfathered insured plans under Public Health Service Act Section 2716 as added by PPACA. We therefore recommend that the Departments adjust the Amended Grandfather IFR so that the provision allowing plan or policy changes applies retroactively as well as prospectively.

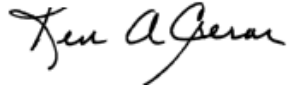
The CIAB appreciates this opportunity to comment on the Departments’ Amended Grandfather IFR. Once again, we commend the Departments for amending the rule to facilitate insured plans’ efforts to obtain the best coverage for their participants, and we urge that the amended rule be applied retrospectively as well as prospectively, so that a plan’s decision on

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<sup>2</sup> Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Plan Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 34538 (June 17, 2010).

whether to forego grandfather status is based on the plan's considered judgment as to costs versus benefits, rather than mere timing.

Respectfully submitted,

A handwritten signature in black ink that reads "Ken A. Crerar". The signature is written in a cursive style with a large initial "K" and "C".

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