



July 27, 2010

Hilda Solis
Secretary of Labor
United States Department of Labor
Francis Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

Phyllis Borzi
Assistant Secretary, EBSA
United States Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re. Final Interim Rule – Status as Grandfathered Health Plans

Dear Secretary Solis and Assistant Secretary Borzi:

I write on behalf of the members of the Self-Insurance Institute of America (SIIA). SIIA represents small to mid-sized employer-sponsors of self-insured health plans as well as many industry leaders who provide wide-ranging services to these types of plans. SIIA also represents the interests of the over 75 million Americans who currently receive their self-insured healthcare coverage.

Beneficiaries covered by self-insured plans generally see more generous coverage of benefits. Also, due to regulatory uniformity granted by ERISA, plans have the flexibility to provide benefits that are tailored to the needs of its participants. National uniformity also helps to lower administration costs due to streamlining of compliance requirements. Another driving factor that explains the cost-benefits of self-insuring is that there is no profit-margin built into a participant's cost of coverage. Finally, the most significant benefit of self-insured plans is that plan-sponsors have a direct incentive to lower costs. As employers act as the risk-bearers, it is in their best interest to keep their plan's participants healthy. This is a direct reason why the self-insurance industry has served as a leading innovator and promoter of prevention and wellness programs.

Please accept the following as SIIA's comments on the Final Interim Rule relating to the status of a grandfathered health plan under the PPACA and how the interim rules and outstanding issues could affect self-insured, employer-based health plans.

Allowing Plans to Move from Fully-Insured to Self-Insured:

One of the outstanding questions documented in the final interim rule was the issue of whether a group can transition from fully-insured coverage to a self-insured plan and still

maintain its grandfathered status. We are confident that the answer to that is an emphatic yes. Moving to a self-insured health plan is completely in the spirit of allowing individuals and families to keep the coverage they have and ensuring that they will not see a reduction in their benefits or an increase in their costs.

When a group chooses to move from a fully-insured plan to one that is self-insured, the sponsor and/or the administrator has the flexibility to structure the plan in such a way that it could very well mirror the plan it moved from. Moving to self-insuring simply changes the risk-barrier from the insurance company to the employer and does not necessarily mean any noticeable or meaningful change to the type of a beneficiaries' coverage at all. In fact, the advantages of self-insuring will likely allow a sponsor to increase benefits offered and lower a participant's cost; both allowable modifications under your departments' final interim rules.

In order to ensure that moving from a fully-insured to a self-insured plan is done by making the allowable changes, we propose Federally regulated safeguards be put in place. The plan sponsor would have to continue to cover all previous benefits with specific emphasis on those used to diagnose or treat conditions. Companies would be prohibited from increasing any fixed cost-sharing requirements more than the allowable levels provided for in the final interim rules. Companies would also be prohibited from increasing cost-sharing percentages above what they had been in the former fully-insured plan. Finally, companies would be prohibited from ever decreasing their contribution rates greater than 5% from what they were on 3/23/10.

Lastly, groups should have the option to move to a coverage structure that lowers costs to both the sponsor and the participants and increases benefits covered. Those are the reasons groups have been making the transition to self-insurance, and those are justifiable reasons why they should be allowed to continue to do so as long as they retain the coverage and cost sharing duties outlined in the final interim rule to maintain grandfather status. As employee participants are able to maintain their benefits without any cost-increase, employer-sponsors should be able to move from fully-insured coverage to self-insured coverage without losing its grandfathered status.

Allowing Plans to Self-Insure their Prescription Drug Benefits:

Another undecided issue was whether to allow plans to make changes in their prescription drug coverage while maintaining their grandfathered status. Many benefit plans that are currently unable to self-insure its health coverage have decided to self-insure their participants' prescription drug coverage. The benefits of self-insuring a prescription drug program are similar to self-insuring a group health plan. Sponsors have direct control over which prescriptions their participants want and need and the non-profit nature of coverage allows the employer to lower the cost of those prescriptions.

We strongly believe that employers should be able to change from a fully-insured prescription plan to one that is self-insured without losing its grandfathered status as long as the prescriptions covered are either the same or expanded as they formally were and all cost-sharing protections detailed in the rules would apply.

As such, Federal guidelines should be in place to facilitate such a change in prescription drug coverage.

Changes in Provider Networks:

Lastly, the question was raised as to whether plans should be allowed to change their provider networks without losing their grandfathered status. SIIA strongly believes that plan-sponsors should be able to look into changing provider networks if such an effort is aimed at lowering costs and/or expanding access for beneficiaries.

Plans should be allowed to change their provider networks without losing their grandfathered status as long as the coverage requirements outlined in the Interim final rule is satisfied. Plans would have to ensure that benefits and access to coverage are not decreased. Also, we would recommend that if plans are allowed to change their provider network, that beneficiaries be given the right to maintain their primary care provider whether they are in or out-of-network. The plan would be prohibited from imposing out-of-network coinsurance rates from participants if they choose to keep a primary care provider who is no longer in-network.

Plans change provider networks for a number of reasons. First, a new provider network might offer greater discounts, which help reduce the cost of treatments and services. Second, a plan might move to a new provider network because it offers an expanded number of providers or providers who are at a greater quality level. Changes made to provider networks help lower a participant's costs as well as expand their coverage options. Reduced costs also help a plan-sponsor expand covered benefits and increase their levels of cost-sharing.

Changes in Administrative Service Only Providers:

While the final interim rules specifically allow self-insured plans to change Third Party Administrators (TPA), they remain silent on whether a self-insured plan is permitted to change Administrative Service Only (ASO) providers. While an ASO provides a service from a commercially-insured carrier, the plan itself remains self-insured and completely separate from the carriers fully insured products. An ASO carrier is typically a state licensed insurer operating under a Certificate of Authority who is not required to maintain a separate TPA license. While an ASO provides similar services as a TPA to the self-funded plan, there is a state licensing differentiation that must be addressed. Whether the self funded plan contracts with an insurance company on an ASO basis or whether it utilizes the services of a Third Party Administrator the fact is the plan itself remains self-insured and the plan benefits do not change unless instructed by the self funded plan sponsor. Since ASOs and TPAs both serve as plan administrators for self funded plans, a change from one to another results in absolutely no structural changes to the plan. We believe you clearly documented this as the case when permitting a self-insured plan to switch TPAs and maintaining Grandfathering status. As such, we seek clarification that plans may change their TPA or ASO provider without jeopardizing their grandfathered status.

Conclusion:

We believe that making the aforementioned plan changes should not jeopardize a plan's grandfathered status. With the appropriate consumer safeguards in place, these changes are advantageous to plan beneficiaries in that they will result in lower costs and increased benefits. We request that your departments see these plan modifications as in the spirit of those which you have deemed appropriate in the final interim rules.

Please do not hesitate to contact me or SIIA's Manager of Government Relations, Jay Fahrer, at 202-463-8161 with any questions or if we can provide any further insight.

Thank you in advance for your time and consideration of SIIA's comments.

Respectfully,

A handwritten signature in black ink, appearing to read "Michael Ferguson", with a long horizontal flourish extending to the right.

Michael Ferguson
Chief Operating Officer
Self-Insurance Institute of America (SIIA)