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Department of Labor  
Frances Perkins Building  
200 Constitution Ave., NW  
Washington, DC 20210  
Submitted via [www.regulations.gov](http://www.regulations.gov)

RIN 1210-AB42

Ladies and Gentlemen:

On behalf of the 3.2 million members of the National Education Association, we are pleased to provide comments on the interim final rules on group health plans and health insurance coverage relating to status as a grandfathered health plan, published in the *Federal Register* on June 17, 2010 (pages 34538-34570). As strong supporters of the effort to reform this country's health care system, we greatly value the important work being done now to produce regulations related to the new health care law.

We have divided our comments into two sections. The first part responds to questions on which the Department of Health and Human Services, Department of Labor, and Treasury ("the departments") specifically sought comments, and the second addresses parts of the interim final rules on which we seek further clarification or changes from the departments.

## **I. Response to Questions Asked in the Interim Final Rules**

### **1. Should changes to plan structure (such as switching from a health reimbursement arrangement to major medical coverage or from an insured product to a self-insured product) lead to a cessation of grandfathered health plan status?**

The National Education Association approached this question from the point of view of the impact on plan participants. In doing so, we felt that a change in plan structure that would lead to major changes for plan participants should lead to a loss of grandfathered status. Thus, a switch from a health reimbursement arrangement to major medical coverage should lead to a loss of grandfathered status. However, a change such as a switch from an insured product to a self-insured product should not, on its own, lead to a loss of grandfathered status.

**2. Should changes to a network plan's provider network lead to a cessation of grandfathered health plan status, and, if so, what magnitude of changes would have to be made in order for there to be a loss of grandfathered status?**

We recognize that provider networks change through the normal course of business, irrespective of whether a plan sponsor changes from one network to an entirely new one. We also know that the active oversight of provider networks is an important part of any attempt to contain costs and improve quality. At the same time, a provider's decision to join or leave a network can result from many factors incorporated into that provider's business decisions. As a result, in general, a change of any sort in a network plan's provider network should not necessarily lead to a loss of grandfathered status. However, given the importance of networks to plan participants, a significant change in a provider network that leads to significant disruption in plan participants' providers over a defined period of time, including the creation of a dramatically smaller network, should result in a loss of grandfathered status.

We request that the departments develop metrics for defining significant disruption, taking into consideration factors such as the availability of providers, hospitals, clinics, and labs.

**3. Should changes to a prescription drug formulary lead to a cessation of grandfathered health plan status and, if so, what magnitude of changes would have to be made in order for there to be a loss of grandfathered status?**

The active management of prescription drug formularies is part and parcel of the ongoing, effective management of a plan's prescription drug benefits. Given the complexity of formulary management, any change to a prescription drug formulary should not necessarily lead to a cessation of grandfathered status. Nevertheless, substantial changes in prescription drug formularies should lead to a loss of grandfathered status. We request that the departments develop metrics for defining significant disruption in this context.

**4. Should any other substantial change to the overall benefit design lead to a cessation of grandfathered health plan status?**

Substantial changes in benefit design should lead to a loss of grandfathered status, as such changes would, by definition, result in major changes to a benefit package.

## **II. Requests for Clarification of Issues Related to Grandfathered Status**

### **5. Clarification of the definition of a “benefit package.”**

The term “benefit package” is not defined in the interim final rules related to grandfathering. Although the rules seem to suggest that different coverage options under an overall health benefits plan—such as a PPO and an HMO option—would constitute separate benefit packages, they do not clarify whether differences in cost-sharing, benefits, employer contributions, and eligibility requirements would constitute different benefit packages.

In other interim final rules, more detailed language is used to define benefit packages for the purposes of those rules. For example, the interim final rules related to preexisting condition exclusions, lifetime and annual limits, rescissions, and patient protections define benefit packages (26 CFR 54.9815-2711T(e)(4), 29 CFR 2590.715-2711(e)(4), and 45 CFR 147.126(e)(4)). In reference to enrollment notices for people enrolling in a plan after coverage or benefits ended by reason of reaching a lifetime limit, those rules indicate: “For this purpose, any difference in benefits or cost-sharing requirements constitutes a different benefit package.” Similar language is used in the interim final rules related to the expansion of dependent coverage to age 26 (26 CFR 54.9815-2714T(f)(4), 29 CFR 2590.715-2714(4)(f), and 45 CFR 147.120(4)(f)).

The National Education Association requests that the departments clarify what constitutes a benefit package for purposes of regulations related to grandfathering.

### **6. Clarification of the impact of changes in employer contributions in the context of multiemployer plans.**

In the public sector, multiemployer health plans exist in which all participating employers have similar benefit plan options but make individual arrangements with employee groups related to how much they will contribute toward the health insurance premium. In such circumstances, the multiemployer plan plays no role in determining the contribution, and may not have any information on what the employer/employee contribution arrangement is. In such circumstances, a change in one employer’s contribution rate beyond the limits set in the interim final rules should not have the ability to lead to a change in the benefit packages being offered by the multiemployer plan (26 CFR 54.9815-1251T(g)(1)(v), 29 CFR 2590.715-1251(g)(1)(v), and 45 CFR 147.140(g)(1)(v)). As a result, we encourage the departments to clarify that changes in employer contributions in the context of a multiemployer plan will not lead to a loss of grandfathered status.

**7. Clarification of situations in which employer or employee groups choose between plans offered by different plan sponsors**

With respect to adding new employees, the interim final rules appear to focus on situations in which an employer transfers employees between plans by the same plan sponsor. If, however, employers and employee groups (such as a bargaining unit) can choose between plans already made available to them by different plan sponsors, as sometimes happens in the public sector, the change should be permitted without affecting the grandfathered status of the plan into which the employer or employees transfer, even if the plan out of which the employer or employee group is transferring lost its grandfathered status. This situation is materially different from the situation contemplated in the anti-abuse provisions of the interim final rules, in which a single plan sponsor decides to transfer employees between plans in order to maintain grandfathered status when it otherwise would be lost (26 CFR 54.9815-1251T(b)(2), 29 CFR 2590.715-1251(b)(2), and 45 CFR 147.140(b)(2)). In the case contemplated in this comment, the decision of one plan sponsor or employee group to move to a plan already made available to it by another plan sponsor should not jeopardize the grandfathered status of a separate plan sponsor.

**8. Clarification that a new employer or employee group can join a multiemployer plan without threatening the grandfathered status of any benefit package offered by that plan.**

The ability for new employers (including a subset of employees of that employer) to join multiemployer plans is important. We request clarification that a new employer can join a multiemployer plan without triggering the loss of the grandfathered status of any of the benefits packages offered by that plan.

**9. Clarification that changes to dental and vision benefits when bundled with medical benefits will not be a factor in determining whether grandfathered status is kept or lost.**

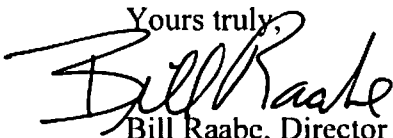
The interim final rules indicate that standalone dental and vision plans are not subject to the grandfathering regulations. As a result, dental and vision plans that are integrated into a medical plan are treated differently under the regulations. Where integrated, a change in dental or vision benefits and cost-sharing could potentially lead to a loss of grandfathered status if medical benefits are integrated with dental and vision benefits. We request that the departments clarify that, where dental and vision benefits are bundled together with medical benefits, changes to dental and vision benefits will not be a factor in determining whether grandfathered status is kept or lost.

**10. Clarification that, in the context of the transitional rules established in the interim final rules, a change effective after March 23, 2010, that was made consistent with the transitional rules will be taken as the baseline for measuring whether future increases or changes result in the cessation of grandfathered status.**

The interim final rules recognize that some plan changes made after March 23, 2010, will be made pursuant to contractual obligations entered into before that date. The rules, however, do not clarify whether, for purposes of determining whether grandfathered status will be kept or lost, plan or coverage changes made pursuant to an agreement made after March 23 are to be measured against the plan or coverage in effect on March 23 or the plan or coverage that was in effect after March 23 but pursuant to the agreement made on or before March 23.

In order for the transitional rules to have any meaning, the appropriate baseline for measuring future plan or coverage changes is the plan or coverage that was in effect after March 23 pursuant to an agreement made on or before March 23. We request that the departments make this clarification.

Yours truly,

A handwritten signature in black ink that reads "Bill Raabe". The signature is written in a cursive style with a large, sweeping initial "B".

Bill Raabe, Director  
Collective Bargaining & Member Advocacy  
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