

August 16, 2010

Office of Health Plan Standards and Compliance Assistance
EBSA
Room N-5653
Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

ATTN: RIN 1210AB42

These comments are submitted on behalf of the Society of Professional Benefit Administrators (SPBA).

SPBA is the national association of Third Party Administration (TPA) firms that are hired by employers and employee benefit plans to provide outside professional management of their employee benefit plans. It is estimated that 55% of US workers in non-federal health coverage are in plans administered by some form of TPA. The clients of TPA firms include every size and format of employment, including large and small employers, state/county/city plans, union, non-union, collectively bargained multiemployer plans, as well as plans representing religious entities.

Changing Third Party Administrators

We applaud the Departments' decision that a change in third party administrators by a self-funded plan will not result in the plan relinquishing grandfather status. The Departments correctly recognized that plan sponsors may change a third party administrator without altering the benefit structure or plan design.

Changes to Plan Structure

The Departments requested comments on whether changes to plan structure should result in cessation of grandfathered status, specifically moving from fully-insured to self-funded. We strongly urge the Departments to allow plans to move from fully-insured arrangements to self-funded arrangements without risking the loss of grandfathered status. Plan sponsors typically move to self-funding because it offers the continuation of the same benefits or very similar benefits at a lower cost, with far superior service. Changing to a self-funded plan would be consistent with the "goal of allowing those who like their healthcare to keep it," while at the same time enhancing the plan participant's customer service experience.

The Departments requested comments on whether changes to provider networks should result in cessation of grandfather status. We do not think that provider networks should be a consideration in determining grandfather status. The Departments have set forth very restrictive requirements already to measure grandfather status. These are more than sufficient to ensure

that the quality and quantity of benefits is not reduced in order for a plan to preserve grandfather status. Attempting to craft quality measures for provider networks to gauge the magnitude of changes is entirely beyond the scope of the grandfather rules.

The Departments requested comments on whether changes to prescription drug formularies should result in cessation of grandfather status. Prescription drug formularies should not be a consideration in determining grandfather status. The standards established in (g)(1) provide robust protections to plan participants. Creating guidelines to assess the comparative quality of prescription drug formularies is extremely complicated and completely outside the framework of the grandfather regulatory project.

Impact on Wellness

SPBA is concerned about the impact the standards set forth in (g)(1) will have on the design and effectiveness of wellness programs. Health plans are increasingly experimenting with penalties and incentives to encourage plan participants to engage fully in wellness activities. The penalties and incentives often involve cost-sharing under the plan (e.g., increases or decreases in employer contributions to premiums, deductibles, co-payments).

Health plans are accustomed to structuring their wellness programs that provide incentives based on achieving a health standard to take full advantage of the maximum incentive amount permitted under HIPAA (20 percent of the COBRA cost of coverage). The standards in (g)(1) will prevent plans from fully utilizing the maximum HIPAA wellness incentives and thereby undercut wellness initiatives.

Health plans that structure their wellness incentive programs NOT based on achieving a health standard will also be adversely impacted.

We urge the Departments to provide exceptions to the increase in the percentage cost-sharing requirement, the increase in the fixed-amount of cost-sharing requirement (copayment as well as non copayment), and the decrease in contribution rates by employers for purposes of wellness programs.

Thank you for considering SPBA's comments.

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