



National Association of Health Underwriters

America's Benefits Specialists

August 16, 2010

Via Electronic Transmission

The Honorable Kathleen Sebelius
Secretary, Department of Health and Human Services
Hubert H. Humphrey Building, Room 445-G
200 Independence Avenue, S.W.
Washington, D.C. 20201

RE: File Code OCIIO-9991-IFC – Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan under the Patient Protection and Affordable Care Act

Dear Secretary Sebelius:

I am writing on behalf of The National Association of Health Underwriters (NAHU), a professional trade association representing more than 100,000 licensed health insurance agents, brokers, consultants and employee benefit specialists nationally. We are pleased to offer comments on the Interim Final Rule (IFR) relating to Grandfathered Health Plan Status under the Patient Protection and Affordable Care Act (PPACA), as published in the Federal Register on June 17, 2010 (Volume 75, Number 116).

NAHU members work on a daily basis to help individuals and employers of all sizes purchase health insurance, use their coverage effectively and make sure they get the most out of the benefits they have purchased. They design benefit plans and solve problems that may occur once coverage is in place. Furthermore, most are small-business owners themselves. Since it is the professional role of our membership to provide consumers with accurate information about their health coverage options, we are very concerned about the impact the grandfathered plan regulation will have on our members and the millions of American health care consumers that constitute their client base.

One of the central promises of health reform was that "If you like the coverage you have, you can keep it." NAHU strongly supports the idea of allowing individuals and employers to choose whether or not to keep their current health plan through the use of the grandfathered status provisions of PPACA. We believe in a wide variety of health plan options in the marketplace, and also the ability of consumers of all types to select the coverage options that best meet their specific needs and budgets. However, NAHU is concerned that, in its current form, the IFR will severely limit the ability of employers and individual health insurance consumers to keep their grandfathered status, even if they want to keep their current plan..

The federal government's own estimates included in the IFR indicate that, by 2013, as many as 69% of all employer plans and 80% of small businesses will relinquish their grandfathered status. **As many as 40% to 67% of consumers may lose their status in a given year..** To prevent such a huge number of

American consumers from losing their status before the provisions of PPACA even fully go into effect and allow for greater consumer flexibility, affordability and choice in private coverage options, NAHU offers the following suggestions for improvement to the IFR:

Exceptions to the Loss of Grandfathered Status

First of all, exceptions should be made for individuals and employers who lose their grandfathered status through no fault of their own. For example, if an individual or employer's health insurance carrier pulls out of a state marketplace, the only option the consumer has is to buy a new non-grandfathered policy or cease to be covered altogether. Unfortunately, our members report that a number of carriers are vacating many health insurance markets as a result of PPACA provisions, particularly in the individual and limited benefit plan markets, and that millions of their clients will be affected.

In addition, our members report that many large health insurance carriers are reorganizing all of their policy offerings as means of streamlining administrative expenses. So while an individual or employer may be offered identical benefits through the carrier, their contractual dates may shift and they may technically be sold a new policy offering, thereby triggering a loss of grandfathered status. Such administrative simplification moves, which one way will be a great benefit to insurance consumers created by PPACA, may also inadvertently cause millions to relinquish their grandfathered status.

To address the problem of inadvertent status loss, NAHU suggests that an actuarial equivalence standard be applied, giving individuals and employers some ability to change issuers and policies if certain requirements are met, such as the withdrawal of a carrier from the marketplace or policy reorganization that makes previously grandfathered coverage no longer available.

NAHU also believes that an exception to the grandfathered status rules should be made for individuals who need to make changes to their health plan coverage that go beyond the permissible level in order to be able to continue to afford coverage. As the IFR indicates, one of the advantages of retaining grandfathered status is that the coverage will be less expensive than other non-grandfathered market alternatives. In these trying economic times, it is very common for individual health insurance consumers to need to increase their deductibles or otherwise alter the cost-sharing terms of their plans in order to be able to afford to maintain coverage at all. Our concern is that if such individuals are not able to both retain grandfathered status and have flexibility to adjust their cost-sharing in order to increase affordability, they will drop coverage altogether. Then the unintended consequence of this IFR will be a significant and immediate increase in the number of uninsured Americans.

To fix this issue, we urge you to support temporarily lifting the cost-sharing restrictions on individual plan consumers until federal subsidies and other options become available in 2014. At that time, our members will be able to help the individuals currently experiencing difficulty in affording their coverage transition into other newly available coverage options and/or access subsidies as lawmakers intended.

Cost-Sharing

Another area of the IFR that concerns us greatly is the provisions relative to changes to a plan's fixed-dollar cost-sharing arrangements. The IFR specifies that health insurance coverage will no longer be considered a grandfathered plan if increases to its fixed amount of cost-sharing other than copayments (deductibles, out-of-pocket limits) are more than the portion of the Consumer Price Index deemed to show medical inflation plus 15 percentage points measured from March 23, 2010. Increases in copayments may not be an amount that exceeds the greater of: (1) a total percentage measured from

March 23, 2010, that is more than the sum of medical inflation plus 15 percentage points, or (2) \$5 increased by medical inflation measured from March 23, 2010.

First of all, this fixed dollar cost-sharing formula is overly complicated. It will be burdensome for employers and agents to implement and may lead to inadvertent loss of grandfathered status because employers do not fully understand it or make the calculations incorrectly. Individual consumers will be even more stymied by this complicated formula.

Second, NAHU is concerned that the formula does not adequately take into account medical inflation. The medical component of the Consumer Price Index just measures the costs of certain services. It doesn't fully account for other factors that will drive the cost of medical care and correspondingly health insurance premiums and cost-sharing in the future, such as increased utilization of services, an aging population, the cost of new technologies, new mandated benefit requirements and new PPACA-related taxes and fees. Furthermore, since the formula is tied to the static baseline of March 23, 2010, eventually all plans will lose their grandfathered status.

As an alternative, NAHU recommends that DHHS develop an actuarial equivalence standard and allow for the retention of grandfathered status as long as all health plan changes fall within that standard. This approach would give employers, health plans and individual consumers much more flexibility and account for overall increasing health care costs, but also still ensure that the approximate health plan value was retained.

Transitional Provisions

NAHU sincerely appreciates the transitional provisions of the rule that allow certain plan changes to be implemented after the March 23, 2010, deadline as long as the changes were contracted, filed or adopted prior to that deadline. Furthermore, we appreciate the temporary grace period that is provided to employers and issuers to revoke or modify any changes to plans adopted after enactment of PPACA and the publication of the IFR. However, we are extremely concerned that the IFR does not contain transition provisions for those individuals and employer groups who were in the process of renewing their health plan contracts when the IFR was released and then went on to make impermissible changes.

Our members report to us that employers of all sizes begin work on changes to their health plan designs and contracts for the next year up to six months ahead of the actual plan renewal date. Large employers frequently have already negotiated contract changes and distributed information to employees about new benefit plan options up to 120 days before a plan renewal, and smaller firms typically do so between 45 and 120 days before a renewal. Our members report that hundreds of thousands of their clients were midstream in their health plan renewal process when the IFR was issued. In many cases, contracts had already been finalized; sometimes they were signed and were just waiting to go into effect. In other cases, employee open enrollment periods had already been completed or were occurring when the rule was issued. In thousands of other cases, plan modifications had already been communicated to employees. In all of these instances, our members report that employers have determined that it would be too late to go back and make plan changes without facing significant costs and a disruption in their employee benefit services. So, for lack of a better option, these employers will forgo their grandfathered status.

And these are just the employers that were able to make an informed decision about their limited options. Individual health plan consumers renewing plans effective July 1 or August 1 might not have

even been aware of the IFR, its impact and their options regarding grandfathered status. These individuals, particularly if purchasing coverage independently without the guidance of a licensed and trained agent or broker, could easily have unknowing made changes to their coverage that would affect their grandfathered status.

To protect consumers who were in the process of making health plan changes but had not finalized them yet by the date of the release of the IFR, NAHU feels the transition enforcement provisions should be extended to all health plans renewed between March 23, 2010, and September 23, 2010, so that these consumers have the opportunity to correct an impermissible change. In addition, if future changes are made to the grandfathered status rules as a result of this IFR, we request that all plan changes made prior to the issuance of new rules or guidance be exempt and that transitional enforcement rules be applied to all plans making changes within 120 days of the release of any new rules or guidance.

Wellness and Disease-Management Programs

NAHU would also like to request clarification on several issues in the IFR that have been repeatedly identified as areas of concern for our members as they work with large and small employer clients on benefit plan design. The first issue concerns employer-sponsored wellness programs, which have been proven to help reduce health care costs for both employers and employees. Since NAHU members help employers of all sizes design innovative wellness programs for their employees, we are highly supportive of the PPACA provisions that will provide grant funds to small employers to create wellness programs beginning this October, as well as the provisions that take effect January 1, 2014, that will give employers greater flexibility in designing wellness programs and adequately reward participants for meeting personal health goals. These provisions in PPACA show clear intent to expand and improve employer-sponsored wellness programs, but our membership is concerned that, since the IFR does not address wellness programs, it may actually have the unintended impact of limiting them.

NAHU believes that it should be clarified that the creation of new employer-sponsored wellness programs will have no impact on a plan's grandfathered status, and neither will increasing the value of incentives under such plan, as is permissible by federal law. Furthermore, as employers and wellness plan providers are constantly making changes and improvements to wellness programs to make coverage more affordable and responsive to the needs of employees, we do not believe any wellness plan change or addition of a wellness plan provider should impact grandfathered status. Similarly, we believe changes to disease-management plans, addition of disease-management services or changes in disease-management providers should have no bearing on a plan's status.

Notification Requirements

Our members are also repeatedly being asked by their employer clients for more information relative to the grandfather status notification requirements for plan participants. NAHU seeks clarification as to who is responsible for providing notice to group plan participants. Is it the employer, the health insurance carrier or a third-party administrator? Also, NAHU has concerns about the language in the IFR regarding the frequency and format of the notification that needs to be provided to plan participants.

The regulation states that, in order to retain grandfathered status, a statement must be included "in any plan materials provided to a participant or beneficiary describing the benefits provided under the plan or health insurance coverage that the plan or coverage believes it is a grandfathered health plan." The IFR goes on to provide very detailed model language that can be used by the plan to satisfy this requirement. However, the regulation's own cost estimate seems to indicate that notification should be

provided in a distinct document to plan participants on a one-time basis. NAHU would like see this provision of the rule clarified as to exactly when the detailed notification language specified in the rule needs to be included in plan materials and distributed to participants. Employers routinely provide their employees with information about their health plan benefits in e-mails, in employee newsletters and in written materials beyond the official summary plan description. Requiring that detailed and specific disclosure language about grandfathered status be included in every descriptive piece about benefits will not only be cost-prohibitive, it will be so burdensome that it will, in all likelihood, decrease the number of communications a participant receives describing benefits. Also, the IFR includes no provision for notification of participants if a plan's grandfathered status changes.

Instead, to simplify notification requirements for both plan sponsors and beneficiaries, we request clarification that detailed notice about grandfathered status akin to the model language provided in the IFR is just required to be provided to beneficiaries on an annual basis or if the plan's status changes. Other communications summarizing or describing benefits should include references to the plan's grandfathered status, if applicable, but should not have to include all of the language specified in the model notice.

Stop-Loss Coverage

NAHU also seeks clarification about the impact a change in a stop-loss carrier, or stop-loss policy terms, would have on a self-funded health plan's grandfather status. The IFR makes very clear that for self-funded plans a change in a third-party administrator does not constitute a loss of grandfathered status as long as plan benefits do not change beyond the terms outlined as permissible in the IFR. However, the IFR does not address whether or not a change in a stop-loss carrier, or if changes to the terms of an existing contract a self-funded employer plan has with a stop-loss carrier, would have any impact on the plan's grandfathered status. NAHU feels strongly that the rules regarding third-party administrators and self-funded plans should be extended to stop-loss carriers, and that any change in a stop-loss carrier or a stop-loss carrier contract modification should have no effect on the plan's grandfather status. Such changes have no bearing on the provision of benefits to participants, and are merely reflective of financing decisions that impact only the plan sponsor.

Need for an Exclusive List of Permissible Changes

While the IFR specifically details a number of changes that result in plans losing their grandfathered status, it does not indicate whether that list is exclusive. The lack of certainty in this area has impacted our members' ability to adequately advise their clients about health plan design changes, and has prompted quite a bit of concern from employers and health insurance carriers alike. To provide reassurance to both consumers and payers, we request clarification that the list included in the IFR is an exclusive list.

Impact of Formulary and Provider Network Changes on Grandfathered Status

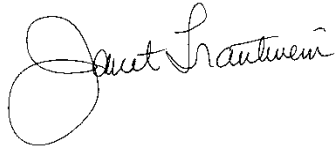
NAHU would also like to provide comment with regard to your request for information about our association's view on changes to a health plan's prescription drug formulary and/or provider network. We firmly believe that any changes of this nature should have no impact on a plan's grandfathered status. Prescription drug advances are ongoing, and changes to plan drug formularies are a common occurrence to ensure patient access to new therapies as they enter the marketplace and newly developed generic drugs. Modifications are also made routinely to ensure patient safety. Such changes allow health plans to offer prescription drug coverage to enrollees in an affordable and safe manner. In addition, employers offering fully insured benefits have little to no control over their plan's formulary

design, and neither do individual health insurance consumers. As such, we do not believe that a change in a health plan's formulary should have any impact on a plan's grandfathered status.

Similarly, we do not believe that a change to a health plan's provider network should result in a loss of grandfathered status. Again, individual and business health care consumers have no control over whether or not their health insurance carrier makes such changes. Furthermore, health insurance carriers and third-party administrators routinely make changes to provider networks to expand access to quality providers and make adjustments for providers who do not meet quality standards, who are no longer practicing or who have left the service area. Consumers benefit from their health plan's regular maintenance of their provider networking system, and any changes to that system should have no bearing on the grandfathered status of their plan.

NAHU sincerely appreciates this opportunity to provide comments on the IFR, and we look forward to working with you as implementation of PPACA moves forward. If you would like more information, or if we can be of further assistance, please feel free to contact me at either (703) 276-3806 or jtrautwein@nahu.org.

Sincerely,

A handwritten signature in black ink that reads "Janet Trautwein". The signature is written in a cursive style with a large, looping initial "J".

Janet Trautwein, Executive Vice President and CEO
National Association of Health Underwriters