

August 16, 2010

Submitted Electronically: <http://www.regulations.gov>

Office of Consumer Information and Insurance Oversight
Department of Health and Human Services
Attention: OCIO-4150-IFC
Baltimore, Maryland 21244-1850

Re: *Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act*

Dear Sir or Madam:

Kaiser Permanente offers the following comments in response to the above-captioned Interim Final Rules (“IFR”), issued in the *Federal Register* on June 17th. Kaiser Permanente is the largest private integrated healthcare delivery system in the U.S., delivering health care to approximately 8.7 million members in nine states and the District of Columbia. Kaiser Permanente comprises Kaiser Foundation Health Plan, Inc., the nation’s largest not-for-profit health plan, and its health plan subsidiaries outside California and Hawaii; the not-for-profit Kaiser Foundation Hospitals which operates 36 hospitals and over 400 other clinical facilities; and the Permanente Medical Groups, independent physician group practices that contract with Kaiser Foundation Health Plan to meet the health needs of Kaiser Permanente’s members. Most pharmacy, diagnostic, and laboratory services delivered to Kaiser Permanente members are performed within Kaiser Permanente.

Kaiser Permanente believes that the Patient Protection and Affordable Care Act (PPACA) has the potential to represent an important step towards achieving universal coverage in the United States and towards establishing reasonable market rules that will allow plans to compete on quality and cost rather than on risk avoidance. We appreciate your efforts through this IFR to balance the objectives of preserving the ability of individuals to maintain their existing coverage with the goals of ensuring access to affordable essential coverage for all individuals, grandfathered or not, and improving the quality of coverage over time.

In the IFR you have requested comment on several issues that might impact grandfathered status including (1) changes to plan structure and (2) changes to a prescription drug formulary. We offer our recommendations below on these topics, recommend good faith effort and hold harmless provisions, and seek clarification on issues that may impact a plan’s grandfathered status.

Administrative Changes to a Plan’s Structure

The IFR requests comment on whether changes to a plan’s structure should result in cessation of grandfathered health plan status for a plan or health insurance coverage. Kaiser Permanente recommends that changes made to a plan’s structure that do not decrease benefits beyond what is allowed under the guidelines should not jeopardize a plan’s grandfathered status. Specifically, we

recommend that an employer be allowed to change the structure and financing of a plan from a fully insured plan to a self funded plan or vice versa without losing grandfathered status and request clarification on this issue.

Routine Changes to a Prescription Drug Formulary

The availability of new generic drugs, development of new prescription drugs, advances in medical knowledge and research, and revised medical guidelines necessarily require regular changes to prescription drug formularies. The Permanente Medical Groups routinely update our formularies to incorporate the latest pharmaceutical research and evidenced-based guidelines to provide our members the highest quality care. These modifications also ensure the most cost-effective use of our member's dollars by assuring the use of equally effective generic (or less costly brand name) alternatives wherever clinically indicated. For these reasons, Kaiser Permanente recommends that routine modifications to a prescription drug formulary, as opposed to wholesale formulary changes that materially reduce the value of a drug benefit, should be allowed without affecting the grandfathered status of plans.

Recognizing Good Faith Efforts and Hold Harmless Provisions

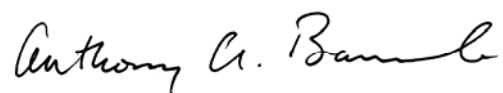
The IFR notes that the Department will take into account good-faith efforts to comply with a reasonable interpretation of the statutory requirements and may disregard changes to a plan or policy that only modestly exceed those changes described in paragraph (g) (1) of 45 CFR 147.140 and that are adopted before the date the regulations were made publicly available. Kaiser Permanente appreciates the acknowledgement of an issuer's good faith efforts to comply with the regulations and recommends only requiring prospective changes to grandfathered plans in this instance. In addition, we recommend holding health insurance issuers harmless from any administrative or other penalties for providing a grandfathered benefit offering to an ineligible employer plan if an employer action (such as a change in contribution level) ends grandfathered status and the issuer had no knowledge of the changes.

Preserving the Right to Maintain Grandfathered Status for Purchase of Coverage Through a Trust

Kaiser Permanente seeks to clarify that the date for determining the grandfathered status of coverage issued through a trust is the date the employer or individual consumer purchased coverage through that trust.

We appreciate the opportunity to comment on this IFR. If you have questions or concerns, please contact me at 510.271.6835 (email: anthony.barrueta@kp.org).

Sincerely,



Anthony Barrueta
Senior Vice President, Government Relations

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