

REG-118412-10

SEP 08 2010

PUBLIC SUBMISSION

As of: September 08, 2010
Received: August 16, 2010
Status: Posted
Posted: September 08, 2010
Tracking No.: 80b3187c
Comments Due: August 16, 2010
Submission Type: Web

Docket: IRS-2010-0010

Group Health Plans and Health Insurance Coverage Rules Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act

Comment On: IRS-2010-0010-0001

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

Document: IRS-2010-0010-0894

Comment on FR Doc # 2010-14488

Submitter Information

Name: Steven Frederick McDowell

Address:

Arnold & Kadjan
19 West Jackson Boulevard
Chicago, IL, 60429

Email: arnoldandkadjan@aol.com

Phone: 312-236-0415

Fax: 312-321-0438

Submitter's Representative: Steven McDowell

Organization: NECA-IBEW Family Medical Care Plan

General Comment

See attached file(s)

Attachments

IRS-2010-0010-0894.1: Comment on FR Doc # 2010-14488

8/16/10

Office of Consumer Information and Insurance Oversight
Department of Health and Human Services
Attention: OCIO-9991-IFC
P.O. Box 8016
Baltimore, MD 21244-1850

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

The national NECA-IBEW Family Medical Care Plan, a collectively bargained, jointly trustee, multi-employer health care plan wishes to comment upon the likely unintended consequences of the "anti-abuse" regulations found in Section (b)(2) of the Interim Regulations, particularly the provisions of subsection (b)(2)(ii). We believe that clarification should be provided which would ensure that the protection of "bona-fide employment-based reasons" under subsection (b)(2)(ii)(C) would apply to cases involving common transactions of multi-employer plans which, if left unaddressed, could have the unintended effect of causing involved "transferee" plans to lose "grandfathered" status.

Initially, employees of contributing employers enter and leave these plans pursuant to arms length collective bargaining between unions and the employer. These are not transactions which are in the control of an employer and the role of the union as the collectively bargained representative of employees ensures that the interests of employees will be protected in the process. But, without clarification from the agencies that bona fide good faith collective bargaining over health plan terms constitutes a "bona-fide employment-based reason" for a transfer, a transferee multi-employer plan may be reluctant to accept new employee groups for fear of loss of grandfathered status, a condition which could have the undesirable effect of locking employees in plans which may not prove advantageous.

A similar concern is raised in the area of mergers between multi-employer health care plans. Frequently, a merger of plans may be occasioned by a merger between local unions ordered by an International Union, a transaction which would seem to represent a "bona-fide employment based reasons for a transfer." In other cases, the plan sponsor joint board of trustees of the "transferee" plan determines that it can no longer administer a plan of benefits or that the administration of the plan could more efficiently be carried out by a larger plan. In those cases a merger is undertaken between the multi-employer plans which usually results in a "transferor" plan becoming part of an ordinarily larger "transferee" plan. Generally an employer is not involved in these transactions between multi-employer plan sponsors and only becomes involved when the employer and union negotiate a collective bargaining amendment substituting the transferee plan for the transferor plan in the agreement. These transactions are not motivated by an employer's

cost cutting desires, but without clarification that plan mergers of multi-employer plans represent “bona-fide employment-based reasons” for a transfer, could result in reluctance on the part of surviving “transferee” plans to absorb “transferor” plans in merger transactions for fear of losing grandfathered plan status.. This result could significantly lessen the health care choices available to unionized employees.

We would ask that the agencies clarify that addition of employees to transferee plans pursuant to either arms length collective bargaining over employee plan coverage or mergers between multi-employer plans represent “bona-fide employment based reasons” for a transfer under subsection (b)(2)(ii)(C) of the regulations.

NECA-IBEW FAMILY MEDICAL CARE PLAN

By: Steven F. McDowell
Arnold and Kadjan
19 West Jackson Boulevard
Chicago, Illinois 60604
(312) 236-0415