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Judith A. Langer
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Submitted electronically to e-ORI@dol.gov

March 19, 2008

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: 408(b)(2) Hearing
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

RE: **29 CFR Part 2550**
Reasonable Contract or Arrangement Under Section 408(b)(2)
Fee Disclosure; Proposed Rule
72 Fed. Reg. 70988 (December 13, 2007)

Dear Sir or Madam:

WellPoint, Inc. respectfully requests the opportunity to testify at the hearing scheduled on March 31 and April 1, 2008 regarding the Proposed Rule issued by the Department of Labor, Employee Benefits Security Administration on Reasonable Contracts or Arrangements under Section 408(b)(2) – Fee Disclosure. An outline of our proposed testimony is attached.

WellPoint, Inc. is the largest health benefits company in terms of commercial membership in the United States, with medical enrollment of almost 35 million members. Many of WellPoint's business units and subsidiaries function as "service providers" to ERISA health and welfare plans, providing third party administration, subrogation recovery, pharmacy benefits management, and myriad other services. We believe that our concerns fairly reflect the depth and breadth of WellPoint's involvement in the healthcare benefits industry.

WellPoint previously filed written comments on this proposed rule with the Department of Labor on February 11, 2008, and we welcome the chance to provide additional input at the hearing. Please contact me by phone at (414) 459-6062 or by email at Judith.A.Langer@wellpoint.com with any questions.

Sincerely,

Judith A. Langer, J.D.
Public Policy Manager

Enclosure



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WELLPOINT, INC.

Hearing on Proposed Rules: Reasonable Contracts or Arrangements Under Section 408(b)(2) – Fee Disclosure

United States Department of Labor Employee Benefits Security Administration

March 31 – April 1, 2008

Outline of Proposed Testimony

The following is an outline of the testimony that WellPoint, Inc. will provide to the Department of Labor, Employee Benefits Security Administration at its hearing on the Proposed Rule on contracts or arrangements between the fiduciaries of employer sponsored benefit plans and service providers. The Department of Labor released a Proposed Rule regarding such contracts or arrangements in the *Federal Register* on December 13, 2007. The timing of each segment of our testimony is also indicated.

- I. Introduction (30 seconds)**
- II. The Department should withdraw the Proposed Rule with respect to health and welfare plans. (1 minute)**
 1. The Department should conduct a comprehensive study of the health and welfare benefits industry to determine whether there are problems in that industry that need to be addressed by guidance or by a proposed rule. The Federal Trade Commission has studied the PBM segment of the service provider industry, and has found no abuses.
 2. The issue of actual conflicts of interest of service providers to welfare benefit plans should be further studied by the Department to identify whether conflicts exist, and if so, if they harm plans. The FTC found no conflict of interest when it studied a potential conflict in the PBM industry.

III. The Department should grant additional time for compliance with the Final Rule. (4 minutes)

1. If the Department declines to withdraw the Proposed Rule, the Department should grant affected entities an extended period of time to comply with the Final Rule and should develop compliance guidance to assist affected entities with compliance. As a model, the Department should use HHS 's experience in encouraging covered entities' compliance with the HIPAA Privacy Rules.

IV. The Department should narrow the scope of the Proposed Rule in order to tailor it to the business practices of the health and welfare benefit plan industry. (3 minutes)

1. The definition of "compensation" in the Proposed Rule appears to be designed for the financial services industry. The definition of "compensation" is overbroad and will not result in disclosure of practical information designed to permit plan sponsors and fiduciaries to assess the reasonableness of their contracts with service providers. The definition of "compensation" is vague and provides little guidance for service providers.
2. Due to variations in plan sponsor requirements, in the PBM industry the definition of "compensation" differs from one plan to another. Working with the PBM industry, the Department should establish benchmarks for compensation within the PBM industry, so that there is a level playing field in this market.
3. The conflict of interest requirements in the rule are problematic. Requiring service providers to disclose potential conflicts of interest is unrealistic and unworkable.
4. The requirement that service providers disclose potential conflicts of interest is vague, subjective, and rife for misinterpretation. The Department should modify the Proposed Rule to require service providers to disclose only actual conflicts of interest.
5. The Proposed Rule's requirement that the service provider identify and disclose to the plan its relationship with another service provider to the plan creates an impossible standard for service providers to meet, and should be omitted from the Final Rule.

V. The compensation disclosure requirement in the Proposed Rules will have an anticompetitive effect on the industry. (1 minute)

1. The compensation disclosure requirement under the Proposed Rule will have an anticompetitive effect in the market. When the proprietary compensation of a service provider becomes available to competitors, as it inevitably will, prices charged by service providers will "smooth" out, and plan sponsors will no longer be able to get the best deal from service providers competing against each other for business. This will ultimately harm plan participants and beneficiaries.
2. Disclosure of indirect compensation will similarly have an anticompetitive effect on the industry, as the FTC found in its study of the PBM industry. The Department should



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narrow the Proposed Rule to eliminate the requirement that service providers disclose indirect compensation.

VI. Conclusion (30 seconds)