

January 3, 2011

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Madame Secretary:

We write today to provide comments on behalf of the National Association of Insurance Commissioners regarding the amendment to regulations governing a group health plan's status as a grandfathered health plan published in the Federal Register on November 17, 2010. State regulators are concerned that this amendment will create a new marketplace for "grandfathered" plans that will be difficult to police and will become a magnet for fraudulent activities. The amendment is also likely to compound the danger of market fragmentation by providing additional avenues for younger and healthier small group plans to opt out of the law's single risk pool requirement, increasing premiums in the reformed small group market.

Section 1251 of the PPACA defines a grandfathered plan as "a group health plan or health insurance coverage in which an individual was enrolled on the date of enactment of this Act" (March 23, 2010). The amendment to the rule, however, expands this definition beyond what is allowed in the statute by permitting group health plans to change health insurance carriers after the date of enactment. Individuals in a group health plan that purchases a new policy were clearly not enrolled in that health insurance coverage on March 23, 2010. This new coverage should not be grandfathered, and enrollees in these plans should be entitled to all of the protections provided by PPACA and should be pooled together with other non-grandfathered coverage.

The original regulations, issued on June 17, would have prohibited new sales of any "grandfathered" plans, providing a straightforward means of enforcement to protect unsuspecting employers from fraudulent plans. Any plan marketed as a "grandfathered" plan would be in violation of this regulation. The amended rule, however, will be far more difficult to enforce as there is no straightforward way of monitoring the marketplace for fraudulent "grandfathered" plans. Instead, regulators will be forced to determine whether each sale of a grandfathered plan is valid on an employer-by-employer basis. At a time when state Insurance Departments are already dedicating significant resources to implementing the other changes required by PPACA, this labor-intensive regulatory process will be very difficult to maintain. This could also exacerbate an already difficult situation in which state regulators lack crucial information about a plan's status with respect to key provisions of PPACA. Federal waivers from these provisions, such as limitations on annual limits, have been granted without the input of state regulators and without notifying them of the existence and scope of these waivers.

We would also like to briefly address one of the premises of this amendment: that the inability of fully-insured group health plans to change insurers while self-insured group health plans are free to change third-party administrators is an unjustifiable difference that must be remedied by this amendment. There is a long history in federal law of distinctions between self-insured and fully-insured coverage, and we do not believe that identical treatment of the two types of coverage is warranted in this instance.

Finally, the amendment would also exacerbate a concern we have noted before that grandfathered health plans will not be subject to the law's single risk pool requirements, potentially resulting in adverse selection that makes coverage in the reformed market costlier for small employers. By providing an avenue for group health plans to remain grandfathered indefinitely, though they may have purchased new coverage several times, this amendment could exacerbate this problem, further straining the ability of small businesses to provide coverage for their employees.

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Thank you again for the opportunity to comment on this amendment. We look forward to continuing to work with you to implement this legislation in a manner that protects consumers and promotes stable, competitive health insurance markets. Please do not hesitate to call upon us if you have any questions or if we can be of assistance.

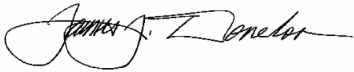
Sincerely,



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