

Response to Request for Comments Regarding Section 1251 of the Public Health Service Act Prior to Rule-making

Submitted to the Department of Health and Human Services, Department of Treasury, and Department of Labor

Submitted by a FL-based Health Plan

Through the Federal eRulemaking Portal

Brief Background on Submitting Health Plan

The health plan making this submission is a FL-based Health Maintenance Organization with over 40,000 covered lives. Its large group and individual products are impacted by the health reform act changes. The preponderance of its covered lives is individual policyholders. Many of the benefit designs of the insurer are individual products with very low monthly premiums to attract individuals with very limited means who would otherwise be uninsured as they exceed Federal Poverty Income Thresholds for government programs. For example our comprehensive HMO coverage for children product is set as \$75 per month per child. Our other individual comprehensive HMO coverage begins at \$90 per month per individual.

Transition individuals

We are seeking clarification surrounding individuals who enrolled in individual policies post 3/23/10 but before 9/23/10. As we understand the rules surrounding these individuals (“transition individuals”), they are not grandfathered but also do not get the benefits of the changes in PPACA until their anniversary date in 2011. We assume they can remain in a grandfathered policy until their anniversary date in 2011 because no mandates apply until then and the essential benefits do not kick in until 2014. We would then move them to a fully compliant non-grandfathered plan. As long as we track these individuals, does this comply with the intent of PPACA and the regulations?

Section 2708

The interim final regulations appear to state that Section 2708 (waiting periods no more than 90 days – effective for plan years on or after 1/1/2014) applies to all grandfathered health plans. We read that to mean group plans and individual policies. The reconciliation act amended PPACA Section 1251 by adding additional mandates for grandfathered health plans. It reads in part: “The following provisions of the Public Health Service Act (as added by this title) shall apply to grandfathered health plans for plan years beginning with the first plan year to which such provisions would otherwise apply.” Section 2708 is subsequently listed. Section 2708 reads in part: “A group health plan and a health insurance issuer offering group health insurance coverage shall not apply any waiting period (as defined in section 2704(b)(4)) that exceeds 90 days.” Section 2708 clearly limits application of the provision to group plans. We do not believe the reconciliation act intended to broaden the applicability of the provision to individual policies. We believe it sought to apply it to group grandfathered plans only. Indeed, it would be counter-intuitive that the provision would apply to a grandfathered individual policy but not to a non-grandfathered individual policy.

Implementing Mandates Not Required in Grandfather Plans

We support the interim final regulations determination that plans do not lose grandfather benefits if they implement certain mandates even though they are not required to, including the addition of benefits. Preservation of grandfather status is important to offer consumers cost-effective choices. At the same time, a health plan may wish to implement a mandate for a grandfather plan for ease of administration across all its products. This reduces administrative costs and gives consumers additional benefits.

Comments on Ceasing of Grandfather Status

We would ask that the departments consider the following:

- Many individual policies historically have imposed very high lifetime limits but no annual limits. The interim final regulations state that grandfather status would be lost if these grandfather plans were to put in place an annual

limit that is less than the historic lifetime limit which is now disallowed. Indeed, this will place certain plans that imposed higher lifetime limits at a disadvantage in the marketplace. We believe the departments should give some consideration to allowing lower annual limits to be placed for plans that did impose high lifetime limits. In the alternative, the departments could allow grandfather plans to retain their status as long as any annual limits do not exceed the phase-in established in the interim final regulation for Section 2711. In the case of grandfathered individual plans, the overall annual cap would apply to all benefits, not just essential benefits.

Other Comments on Ceasing of Grandfathered Status

- Having a cost-effective and quality provider network is important, especially for networked products. We do not believe the interim final regulations should link grandfather status retention to provider network requirements. We would also note that state regulations and approvals generally require all networked products to meet minimum specifications for size and scope of networks for benefits offered. The departments should defer to state rules on this issue.
- We do not believe that changes to a formulary should be considered, either. Again, state laws and regulators will continue to approve the filings for group and individual grandfathered plans.
- As for benefit design changes, we believe that the departments proposals on limiting changes in cost-sharing, employer contributions, and discontinuation of benefits for any disease state or condition will be sufficient to ensure grandfathered plans continue to maintain benefits near the levels they did as of 3/23/10.

Impact on grandfather status for temporary loss of coverage

While PPACA indicates that grandfather status is conferred upon individuals who had coverage in a plan or from a policy on March 23, 2010, we offer the various scenarios below for HHS to offer guidance on loss or retention of grandfather status.

- An individual or family had individual policy coverage before 3/23/10. The individual or family failed to pay premiums and the insurer ended coverage. The individual or family paid such premiums for the entire outstanding period and the insurer agreed to retroactively reinstate the original policy (with the original policy date) and coverage back in time so that no lapse in coverage occurred. Would this individual or family maintain grandfather status?
- An individual or family had individual policy coverage before 3/23/10. The individual or family failed to pay premiums and the insurer ended coverage. The individual or family could not afford to pay premiums back in time, but did ask for a new policy with a new anniversary date to be written and re-commenced coverage. Because the individual or family was covered before 3/23 and the only reason coverage ended was due to inability to make premium payments, would the individual or family be able to maintain grandfather status? We believe that the interim final regulations should provide for retention of grandfather status at the consumer's option if they had coverage before 3/23, re-entered into the same coverage, and coverage lapsed only due to non-payment of premiums. As an alternative, HHS could consider retention of grandfather status if the gap in coverage due to non-payment lasts just for a set and discrete period of time.

Potential conflict between Section 2711 regulations and Section 1251 regulations

With regard to a grandfathered group plan, Section 2711's provision with regard to annual limits is applicable. This would imply that a \$750,000 annual limit is the most a grandfathered group plan could impose as of policies beginning on or after 9/23/10. However, the interim final regulations published with regard to Section 1251 indicate various possible limits for annual limits that would not jeopardize the grandfather status. In some regard, the two interim final regulations would appear to conflict. Isn't it the case, however, that if a grandfather plan could impose a higher than \$750,000 annual limit pursuant to the Section 1251 regulations that it still cannot impose one higher than \$750,000 because Section 2711 in fact applies to grandfathered group plans.