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

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Comment on FR Doc # 2010-14488

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General Comment

See attached file(s)

Attachments

IRS-2010-0010-0931.1: Comment on FR Doc # 2010-14488

August 16, 2010

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

The Honorable Hilda Solis
Secretary
U.S. Department of Labor
200 Constitution Ave., N.W.
Washington, D.C. 20210

The Honorable Timothy Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretaries Sebelius, Solis, and Geithner:

AARP is pleased to comment on the Interim Final Rule (IFR) implementing section 1251 of the Patient Protection and Affordable Care Act (ACA) providing that certain plans or coverage in effect as of March 23, 2010 are exempt from certain provisions of the Act. These plans, which may be either insured or self-insured group health plans or health insurance coverage purchased from health insurance issuers by individuals or groups, are referred to as grandfathered plans or coverage.

AARP appreciates the challenge to the Departments in implementing Section 1251. The rules need to ensure that Americans who are satisfied with their existing coverage are able to retain it and minimize the impact on employers already offering coverage, while also honoring the purpose of the ACA in providing for patient protections and important insurance reforms that safeguard individuals from practices that lead to denials of coverage or to underinsurance in the event of a serious illness or accident.

The Interim Final Rules (IFR) address what changes an insurer or plan sponsor may make to a plan without loss of its "grandfather" status and the steps that must be taken to maintain that status. In addition, clarifications are provided with respect to the treatment of retiree-only plans.

AARP commends the exemption provided for retiree-only plans. The erosion of retiree health benefits has been well documented over the past two decades and our members are particularly anxious about policy changes that contribute to that erosion. Retirees who rely upon early retiree health benefits to provide them with coverage until they become eligible for Medicare want these benefits safeguarded. The exemption of these plans from application of the grandfather rules, an exemption that is fully consistent with the statute, will help to reassure retirees in such plans that their plans can remain as is and be preserved. This is particularly important at a time when so many people looking to retire in the next few years, or who have already taken retirement prior to becoming eligible for Medicare, face great uncertainty and anxiety about their health and economic security.

AARP also commends the Departments for clarifying in the IFR that grandfather status does not extend to plans that are sold to new entities after March 23, 2010. We do recommend, however, that the term "entities" be clarified to include groups (employers and unions, for example).

In addition, we appreciate the emphasis in the IFR on providing adequate disclosure of a plan's grandfather status to participants or beneficiaries, in the case of a group plan, or subscriber, in the case of individual coverage and provide contact information for questions and complaints. This requirement, however, has to be carefully implemented to ensure that the disclosure is helpful and does not lead to confusion and frustration. The model disclosure statement appears to seek a middle ground in terms of the amount of information that must be provided to the individual by providing one example only of a patient protection that is not required to be provided by a grandfathered plan. For more information, the model notice refers the individual to a government website, such as healthreform.gov for additional information.

For a group health plan, decisions related to plan design are generally made by the plan sponsor and not employees. Thus, the information that is disclosed to employees about the grandfather status of their plan may simply have the effect of letting them know that some of the reform changes do not apply to them. On the other hand, a disclosure requirement in the context of individual policies seems more necessary because the purchasing decision is in the hands of the subscriber/consumer. In that case, we urge that the model notice include a table of ACA protections that do and do not apply to grandfathered health plans versus non-grandfathered plans. Because this is complex information, AARP suggests that the Departments conduct some research to see whether the notice achieves its purpose of helping individuals and employers choosing between grandfathered and new plans to make informed decisions. The research may suggest ways to improve the notice.

AARP supports the general thrust of the IFR -- that plans not lose their grandfather status for changes that are modest in nature. This is consistent with the need to balance the objectives in the ACA of preserving the right of individuals to keep their existing coverage with the goal of ensuring access to affordable, essential coverage and improving the quality of that coverage. The specific policies adopted by the IFR with respect to maintenance of grandfather status, such as

elimination of benefits, increases in percentage cost sharing and the other cost-sharing parameters, annual and lifetime limit changes and so on, are consistent with the "modest changes" approach.

In terms of any additional considerations the Departments may make in future rulemaking on plan changes that should result in cessation of grandfathered plan status, AARP offers the following comments:

Changes to plan structure. AARP supports a policy of terminating grandfather status if a plan switches from a health reimbursement arrangement to major medical coverage or from an insured product to a self insured product. These are modifications that potentially alter the character of a plan in significant ways, some of which may result in changes in benefit value or enrollee rights and protections.

Changes in a network's plan provider network, and if so, what magnitude of changes would have to be made. AARP believes that loss of grandfather status should be tied to non de-minimus changes to a plan's provider network that may result in changes in the availability of providers. It may be helpful to plans and consumers if such non de-minimus changes are linked to objective standards of network adequacy.

Changes to a prescription drug formulary and if so, what magnitude of changes would have to be made. AARP believes that loss of grandfather status should be tied to non de-minimus changes to a plan's formulary that are unfavorable to the enrollee. An objective standard would be helpful here. For example, if a plan formulary dropped an entire class of prescriptions in the absence of sound evidence, that would constitute a non de-minimus change resulting in the loss of the plan's grandfather status.

Changes to design of certain benefits. Some policies have dollar limits, visit limits, or separate deductibles on certain benefits. If such limits are changed in ways that have a significant negative impact on enrollees, AARP believes this should be a factor in whether the plan retains its grandfathered status. While the IFR addresses overall annual limits, it is not clear how the rules for changes to that limit or percentage cost sharing, for example, would be considered in relation to changes that may also be made on limits or cost sharing on a specific benefit.

Thank you for the opportunity to comment on this important matter. If you have questions, please contact Nora Super on our Government Relations staff at (202) 434-3770.

Sincerely,

David Certner
Legislative Counsel and Legislative Policy Director
Government Relations and Advocacy