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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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Government Agency Type: Federal
Government Agency: IRS

General Comment

See attached file(s)

Attachments

IRS-2010-0010-0917.1: Comment on FR Doc # 2010-14488

NATIONAL RESTAURANT ASSOCIATION®

August 16, 2010

Submitted via Federal Rulemaking Portal:
http://www.regulations.gov

Mrs. Kathleen Sebelius, Secretary, Department of Health and Human Services
Mr. Jay Angoff, Director, Office of Consumer Information and Insurance Oversight, Department of Health and Human Services
Ms. Phyllis C. Borzi, Assistant Secretary, Employee Benefits Security Administration, Department of Labor
Mr. Michael Mundaca, Assistant Secretary, Tax Policy, Department of Treasury
Mr. Steven Miller, Deputy Commissioner for Services and Enforcement, Internal Revenue Service, Department of Treasury

Re: OCIIO-9991-IFC, RIN 1210-AB42, REG-118412-10 regarding the Interim Final Rule concerning Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act.

Dear Secretary Sebelius, Director Angoff, Assistant Secretary Borzi, Assistant Secretary Mundaca, and Deputy Commissioner Miller:

On behalf of the National Restaurant Association, we appreciate the opportunity to submit our comments on the Interim Final Rule concerning group health plans and status as a grandfathered plan.

The National Restaurant Association is the leading business association for the restaurant and food service industry. Our mission is to help our members establish customer loyalty, build rewarding careers, and achieve financial success. The industry is comprised of 945,000 restaurant and foodservice outlets employing 12.7 million people who serve 130 million guests daily. Despite being an industry of predominately small businesses, the restaurant industry is the nation's second-largest private-sector employer.

BACKGROUND ON THE RESTAURANT AND FOOD SERVICE INDUSTRY

The restaurant and food service industry is unique for several reasons. First and foremost, small businesses dominate the industry – with more than seven out of 10 eating and drinking establishments being single-unit operators. We employ a high proportion of part-time and seasonal workers. Our workforce is typically young, with nearly half under the age of 25. We also have a high average workforce turnover rate relative to other industries – a 75 percent average turnover rate in 2008 compared to 49 percent for the overall private sector. In addition, the business model of the restaurant industry produces relatively low profit margins of 4 to 6 percent before taxes, with labor costs being one of the most significant line items for a restaurant.

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Staying competitive in recruiting and retaining employees is essential to the restaurant industry. Restaurateurs want to continue to provide health care coverage to their employees, and like all employers have flexibility to design such coverage to meet the needs of their employees and the business. Current coverage offerings have been crafted to strike and maintain that balance and restaurateurs should be permitted to do so as envisioned under Section 1251 of the Patient Protection and Affordable Care Act allowing for continuation of existing coverage in effect as of March 23, 2010. The National Restaurant Association, is concerned however, that in its current form the interim final rule will inhibit restaurateurs from achieving that objective.

SPECIFIC STANDARDS ON BENEFITS, COST-SHARING AND EMPLOYER CONTRIBUTIONS
The rule's provisions appear to phase out health plans that existed on March 23, 2010, and not provide the intended protection for such plans for any significant amount of time. As the preamble to the rule states,

> To accommodate these changes in market dynamics in 2014, the Departments have structured a cost-sharing rule whose parameters enable greater flexibility in early years and less over time. It is likely that few plans will delay for many years before making changes that exceed medical inflation. This is because the cumulative increase in copayments from March 23, 2010 is compared to a maximum percentage increase that includes a fixed amount – 15 percentage points – that does not increase annually with any type of inflator. This should...require plans and issuers that seek to maintain grandfathered status to find ways other than increased copayments to limit cost growth.

This approach severely limits strategies that restaurateurs can employ to control cost growth. Although medical inflation is considered by other cost-sharing rules, pressure will be placed on plans to the point where no other alternative exists but to decrease employer contribution as the rule suggests. Such changes may help maintain the health plan's grandfather status, but could negatively impact employers' relationships with their employees. The potential for such an impact is a major concern for the restaurant industry because restaurateurs must maintain good labor relations to remain competitive.

The Departments estimate that 37 percent of small businesses (100 employees; small group market) and 28 percent of large employers that face the choice to maintain grandfathered status by decreasing the employer contribution or lose status will opt to loose the health plan's grandfathered status in 2011. Taken together with those employers expected to change issuers, which will cause a loss of status, the Departments' high-end estimate is that approximately 42 percent of small employers and 29 percent of large employers will relinquish grandfathered status in 2011 alone. If the same assumptions are applied and the estimates are extended through 2013, the Departments' high-end estimates are that 80 percent of small employer plans and 64 percent of large employer plans will relinquish their status by the end of 2013. Even the mid-range estimates are 66 percent and 45 percent respectively through 2013. If true, the standards in the rule will force too many businesses to change coverage by 2013, not allowing maintenance of existing plans they may want to keep. As an industry of mostly small businesses, it strikes us as extreme that 80 percent, or even 66 percent at the mid-range, of small businesses will be forced to relinquish grandfathered status because of the proposed standards.

Section 1251 of the Patient Protection and Affordable Care Act states that individuals who wish to maintain existing coverage will be allowed to do so. However, this rule is structured to cause the eventual phase out of grandfathered plans because inflation is not applied to copayments. In combination with other benefit standards this will continue to put pressure on the plan to the point

where it no longer meets the standards for grandfathered status. The standards should allow for more flexibility regarding what cost-sharing changes will trigger a loss of grandfathered status.

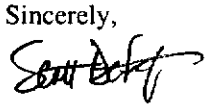
FURTHER CHANGES PROPOSED TO RESULT IN CESSATION OF GRANDFATHERED STATUS
In addition, the Departments should not consider further changes that would cause a plan to loose grandfathered status such as changes in plan structure, a network plan's provider network, or prescription drug formulary. More restrictive standards are not consistent with the intent of Section 1251 of the Patient Protection and Affordable Care Act.

Furthermore, we believe grandfathered status should not be threatened if an employer changes issuers while keeping the same plan benefits and structure intact. The rule specifically allows for a change in third party administrator without a cessation of grandfathered status. Similarly, the issuer administering the benefits should not matter, but the benefits and structure of plan are what should be considered in determining grandfathered status. As a consequence issuers will gain leverage to raise premiums on current plans because they know employers must stay with the same provider or loose grandfathered status.

RECORDKEEPING AND DISCLOSURE OF GRANDFATHERED PLAN STATUS
We believe that it is appropriate for issuers to maintain and be responsible for reporting information for the purposes of recordkeeping. Employers should not be responsible for maintaining these records and the weight of disclosure responsibility should fall on issuers not employers.

CONCLUSION
Thank you again for this opportunity to submit the restaurant industry's comments on the Interim Final Rule concerning Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan under the Patient Protection and Affordable Care Act. We look forward to the Final Rule and strongly urge you to consider the restaurant and foodservice industry's perspective on maintaining grandfathered plan status.

Sincerely,



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