UFCW
a VOICE for working America

LEGAL DEPARTMENT

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***VIA* ELECTRONIC FILING AND HAND DELIVERY**

August 27, 2010

Office of Consumer Information and Insurance Oversight
Department of Health and Human Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington DC 20201
Attention: OCIIO-9994-IFC, RIN 0991-AB69

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration, Room N-5653
U.S. Department of Labor
200 Constitution Avenue, NW
Washington DC 20210
Attention: RIN 1210-AB43

RE: Comments Regarding Interim Final Rules and Regulations and Proposed Rules, Patient Protection and Affordable Care Act-Requirements for Group Health Plans and Insurance Issuers under the Patient Protection and Affordable Care Act Relating to Pre-Existing Condition Exclusions, Lifetime and Annual Limits, Rescission, and Patient Protection (File Code OCIIO-9994-IFC, RIN 0991-AB69/ RIN 1210–AB43/REG–120399-10.)

To Whom It May Concern:

The United Food and Commercial Workers International Union ("UFCW") submits these comments to the Interim Final and Proposed Rules and Regulations ("Proposed Rules") published on June 28, 2010, concerning "Pre-existing Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections" under the Patient Protection and Affordable Care Act ("ACA"). Fed. Reg. 75, No. 123, 37188-37242 (June 28, 2010).

UFCW is a labor organization which represents working men and women across the United States. UFCW's 1.3 million members work in a range of industries, with the majority working in retail food, meatpacking and poultry, food processing and manufacturing, and retail

stores. We are North America's neighborhood union, and the largest union of young workers with 40 percent of UFCW members under the age of 30. UFCW members are from many backgrounds and walks of life, but come together as the UFCW for the shared goal of achieving the American Dream. The UFCW is about workers helping workers improve working and living standards through better wages, benefits, and working conditions. Accordingly, UFCW supported Congress' and this Administration's efforts to address the deficiencies in our healthcare system through the enactment of the ACA.

UFCW appreciates this opportunity to comment on the Proposed Rules. We believe that they generally establish a sound foundation for implementation of the ACA's benefit reforms for workers and their families, as well as other consumers of health care.[1] That said, we are very concerned about the harm to workers and their families who are covered by UFCW plans which would result from mandatory increases in annual limits on essential benefits to the amounts designated in the Proposed Rules for the period before the ACA's total prohibition on annual limits becomes effective in 2014. See Proposed Rules, Fed. Reg. 75, No. 123, 37190-37192 (26 CFR 54.9815-2711T, 29 CFR 2590.715-2711, 45 CFR 147.126). Accordingly, we request that standards be established so that such plans are not subject to these increases in annual limits.

The Proposed Rules' imposition of a floor on annual limits for essential health benefits starting at $750,000 in 2010 and rising to $2,000,000 in 2013 would present a cost hardship for many UFCW plans which would result in either employees' loss of eligibility for health care coverage or reduction in wages or other economic benefits. The UFCW has a long history of negotiating good health benefits for its members, including part-time employees in the grocery industry where the majority of UFCW members are employed. But in many cases competitive pressures have forced us to accept less costly and more modest benefit designs in recognition of the fact that non-union employers offer little or no health benefits whatsoever to workers, particularly part-time workers, or provide some health benefits with high co-premium requirements resulting in low take-up rates.

Simply put, to the extent the Proposed Rules impose new costs on UFCW plans which cover part-time employees, the labor cost differential between union and non-union employers becomes even larger.[2] Consequently, mandating a higher threshold on annual limits for our plans would likely lead to many of our union employers denying health care coverage to part-time workers or otherwise lowering employers' personnel costs in order to stay competitive.

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[1] UFCW submitted comments to the Proposed Rules regarding grandfathered health plans (Red. Reg. 75, No. 116, 34538-34570, June 17, 2010) which raised the need to modify those proposed rules to delay the implementation of certain reforms to prevent substantial harm to workers and their families. The comments herein, however, will address the Proposed Rules at issue with the understanding that they will eventually impact all plans, even those that may remain grandfathered from implementation of certain reforms for a period of time.

[2] To be sure, ACA provides a huge incentive to nonunion operators to continue their refusal to cover part-time employees since the law imposes no financial penalty for doing so. Their part-time employees will increasingly gravitate to taxpayer supported Medicaid programs and to the new Exchanges starting in 2014.

The UFCW Unions and Employers Health and Welfare Fund – Atlanta illuminates the harm which would result from compelled increases in annual limits. Approximately 18,000 workers and their dependents in Georgia and Alabama are enrolled in this Fund which includes six plans for active employees, as well as retiree coverage. The majority of the workers covered by the collective bargaining agreements that participate in this Fund work part-time.

The HMO plan for part-time workers is one of the Fund's plans. This plan currently has a $75,000 annual maximum. Like many other limited plans, this plan was created to provide participants with access to quality health care, including no cost preventative and maternity care, low cost primary care and access to doctors and hospital care. Highlighting the progressive structure of the benefits in this plan, there is first dollar coverage with no co-pay or deductible for preventative and maternity care. For emergency room and hospitalization coverage, the plan pays 70 percent of costs. Mental health services, chemical dependency services and chiropractic care are covered by the plan. The plan deductible is $250, and employee contributions to the plan are $1.50 per week. The plan includes $1,000 in dental coverage, with preventative care covered at 100 percent of cost. In addition, the plan includes disability benefits, life insurance and accidental death and dismemberment coverage. While the plan does not currently cover prescriptions, the union and employers have bargained to include prescription coverage for this plan beginning in 2014, with 100 percent coverage for mail-ordered generics, and a low $5 co-pay for retail generics.

All of the plans in this Fund have low administrative costs, despite the fact that these plans include disability and life insurance benefits. While calculations on each plan vary, the Fund has the equivalent of a Medical Loss Ratio (MLR) of 90 percent or more year to year. Also, despite the annual limits in place for the various plans, only seven people out of 18,000 reached the annual limit in 2008; none of whom were in the part-time plans. In 2009, only one person reached the annual max, again, that person was not in the part-time plans. These figures result in less than a half a percent of people in the Fund reaching any of the annual maximums in the last two years.

The UFCW Atlanta Fund would require an additional $5.1 million in 2011 to fulfill the immediate requirements of the PPACA (including the 2011 annual maximum of $750,000) in all of its plans. Looking at the increased cost solely associated with raising the annual maximum to $750,000, the impact on the two part-time plans in the Fund would be substantial. To comply with the new annual limit in 2011 while maintaining current benefits, these plans would need to raise premiums by 20 percent. This is far greater than the current medical inflation rate of approximately 8 percent, and greater than the projected 11.2 percent increase for employer health costs revealed in a recent Segal Group survey (Labor Relations Week, "Insurers Expect New Health Care Law to Increase Costs in 2011, Segal Says." BNA, http//news.bna.com, accessed August 26, 2010).

In the retail industry, profit margins are notoriously thin, and significant cost increases would put union companies at a competitive disadvantage to non-union retailers who by and large provide little or no benefits. Therefore, companies will not voluntarily pay the increase. For enrollees, the increase would result in a 20 percent premium cost increase. For

low-wage retail food workers, few will be able to afford the increase. The result will be an even lower take-up rate of health benefits by workers, immediately increasing the rolls of the uninsured. Another possible outcome is that the value of the benefit package offered to part-time workers would be reduced by 20 percent. This could mean less first dollar coverage for preventative care, far higher deductibles and elimination of dental benefits, among other possible reductions. The offering of these far inferior benefits would result in lower uptake rates and therefore higher numbers of uninsured, more people avoiding preventative care due to cost and more people experiencing financial hardship due to medical costs. However, the most dire outcome of all would be the elimination of any coverage for part-time workers.

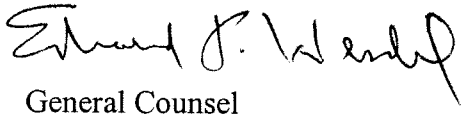
It is important to recognize that most UFCW plans, like the Atlanta Fund's plans, are negotiated into collective bargaining agreements as Taft-Hartley Act multiemployer plans, with employers contributing an agreed upon hourly amount for employee health coverage. UFCW seeks to ensure that these plans have very low administrative costs in comparison to their costs for clinical services and activities that improve health care quality, exceeding the MLR minimum standards established in the ACA, Sections 1001 and 10101. In other words, UFCW negotiates with employers to get the greatest benefit for employees and their families out of every health care dollar contributed by employers.

Importantly, federal law recognizes the sanctity of collective bargaining. Specifically, Section 7 of the National Labor Relations Act ("NLRA") provides that "Employees shall have the right . . . to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining . . . ." 29 U.S.C. Section 157. Unlike other health plans, in the collective bargaining setting, employees' rights to demand a fair economic package are generally protected.

With the above in mind, UFCW requests that the Proposed Rules recognize that collectively bargained health care coverage, in whatever form such coverage is provided, should not be required to increase their current annual limits during the transition period to 2014. In the least, individual waivers from the annual limit requirements should be granted to a plan upon documentation that it provides coverage through a collective bargaining agreement. Standards for individual waivers could also be established for such collectively bargained plans such as the extent of preventive care benefits, administrative cost-efficiency, the nature of the workforce (i.e. part-time workers), and the financial impact of increased annual limits.

We appreciate your consideration of our comments.

Respectfully submitted,



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