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Comment On: IRS-2010-0015-0002
Patient Protection and Affordable Care Act: Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and PatientProtections

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General Comment

National Grocers Association's comments on Patient Protection and Affordable Care Act: Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections.

Attachments

IRS-2010-0015-0022.1: Comment on FR Doc # 2010-15278

DRAFT
DEPARTMENT OF HEALTH AND HUMAN SERVICES
(0CII0-9994-IFC)

RE: **Patient Protection and Affordable Care Act: Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protection (75 Fed. Reg. 37188, June 28, 2010)**

DATE: August 27, 2010

The National Grocers Association takes this opportunity to provide comments on the interim final regulations (IFR) implementing the rules for group health plans and health insurance coverage under provisions of the Patient Protection and Affordable Care Act that were issued by the Department of Health and Human Services (HHS), Department of Labor and Department of the Treasury on June 28, 2010. The IFR implements rules for group health plans and health insurance coverage in the group and individual markets regarding preexisting condition exclusions, lifetime and annual dollar limits on benefits, rescissions, and patient protection. The term group health plan covers both insured and self-insured group health plans. Specifically, N.G.A.'s comments are focused here on the provisions for lifetime and annual dollar limits on essential health benefits.

N.G.A. is the national trade association representing the retail and wholesale grocers that comprise the independent sector of the food distribution industry. An independent retailer is a privately owned or controlled food retail company operating in a variety of formats. Most independent operators are serviced by wholesale distributors, while others may be partially or fully self-distributing. Some are publicly traded but with controlling shares held by the family and others are employee owned. Independents are the true "entrepreneurs" of the grocery industry and dedicated to their customers, associates, and communities.

The National Grocers Association is particularly concerned about the provisions of the IFR that apply to group health plans for plan years beginning on or after September 23, 2010 regarding lifetime and annual dollar limits on benefits under Section 2711. The adverse consequences that are likely to affect independent retail grocers and wholesalers, and ultimately their employees, between now and the elimination of the annual limits on the dollar value of benefits effective January 1, 2014 are real.

The recently released "2010 Independent Grocers Survey" by FMS and the National Grocers Association illustrates the economic environment in which N.G.A. members have been operating in since the recession began. The survey shows that for 2009 average net profit before taxes dropped 20 points to 1.68 percent, while health care costs continue to climb at double digit rate. This is at a time when the industry continues to be influenced by the lack of capital. Retailers rank health care as their number one concern and the survey concludes that the concern today about costs and the question of future costs have become an even greater issue. Health care costs averaged 12.54 percent in 2009 and are expected to increase 13.18 percent in 2010. More disturbing is that the rate increases for 2010 for single store operators are nearing 20 percent. Recent economic indicators have painted a picture of a bleak economic growth, if any, for the coming year.

The interim final regulations will accelerate these health care cost increases and adversely affect the ability of employers to continue to offer health insurance, modify co pays and coverage. More troublesome is that the IFR does not provide flexibility for employers who offer more limited health benefit plans for part-time, temporary and/or seasonal employees. By not providing an exemption from the IFR, employers are likely to eliminate coverage for part-time employees.

Section 2711 prohibits group health plans and health insurance issuers offering group or individual health insurance coverage from imposing lifetime limits on the dollar value of health benefits. Annual limits are also prohibited, but the statute includes a phase-in of this provision before January 1, 2014, which allows plans to impose "restricted annual limits".

Under the interim final regulation restricted annual limits on the dollar value of benefits for essential health benefits may not be less than the following amounts:

- $750,000 for plan years beginning on or after September 23, 2010 until September 23, 2011;
- $1.25 million for plan years beginning after September 23, 2011 until September 23, 2012; and
- $2 million for plan years beginning after September 23, 2012 until January 1, 2014.

After January 1, 2014 no annual limits may be placed on essential health benefits.

HHS and the other agencies that published the interim final regulations recognize that "there is scant data on annual limits on which to base this impact analysis". (75 Fed. Reg. at 37203) It is also recognized that there is substantial uncertainty in data and in the choices plans will decide to make in response to interim final regulations. (75 Fed. Reg. at 37206)

In an attempt to offer some hope of potential relief, the IFR provides waiver authority for the Secretary of Health and Human Services to establish a program under which restricted annual limits may be waived for a group health plan or health insurance coverage that has an annual dollar limit on benefits below the restricted annual limits. This would apply if the annual restrictions would result in a significant decrease in access to benefits under the plan or would significantly increase premiums for the plan or health insurance coverage.

The preamble suggests that the Secretary of Health and Human Services will establish a program under which requirements relating to restricted annual limits may be waived if compliance with the interim final regulations would result in a significant decrease in access to benefits or significant increase in premiums. It also states that guidance from the Secretary of Health and Human Services regarding the scope and process for applying for a waiver is expected to be issued in the near future.

N.G.A. believes that the nature of the grocery industry is such that when employers offer health care benefits, whether in a group healthcare plan where the employer pays premiums to a health insurance issuer, or one that is self-funded or under a collected bargain agreements that relief must be provided.

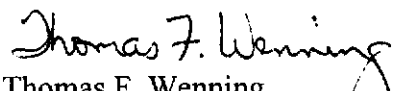
N.G.A. recommended that the Secretary of Health and Human Services modify the regulations to exempt part-time employees from the restricted annual limits, or lower the coverage limits of part-time employees so that they are more reasonable. The reason is that without any relief immediately or through a waiver program, employers that provide health care benefits to part-time workers or others that are currently under the limit may well eliminate health care plans for such employees. Such an outcome would have unintended consequences for those employees who currently receive health care benefits.

N.G.A. believes it is essential that if HHS follows a waiver process as outlined in the IFR there should be a delay in the September 23, 2010 effective date for employers pending approval of the application for a waiver or exemption. Employers are in a catch-22 situation because of the September 23, 2010 effective date, since they do not yet have the benefit of HHS guidance on the waiver program. N.G.A. strongly recommends that the increase in the restricted annual limit increases be waived while an application is pending.

In addition, waivers should be granted to multi-employer group health plans that are subject to collective bargaining agreements until the last date of the plan year beginning prior to January 1, 2014, and not have to apply for annual waivers.

N.G.A. thanks you for the opportunity to present these comments.

Sincerely,



Thomas F. Wenning
Executive Vice President and General Counsel