



August 16, 2010

U.S. Department of Labor
Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
Attn: RIN1210-AB42
200 Constitution Avenue, NW
Washington, D.C. 20210

U.S. Department of Health and Human Services
Office of Consumer Information and Insurance Oversight
Attn: OCIIO-9991-IFC
P.O. Box 8016
Baltimore, MD 21244-1850

U.S. Department of the Treasury
Internal Revenue Service
CC:PA:LPD:PR (Reg-118412)
Room 5205
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20004

RE: Interim Final Rules for Group Health Plans and Health Insurance Coverage
Relating to Status as a Grandfathered Health Plan Under the Patient Protection
and Affordable Care Act.

To Whom It May Concern:

On behalf of the National Small Business Association (NSBA), the nation's oldest small business advocacy group reaching more than 150,000 small businesses nationwide, I am pleased to submit comments on the interim final regulations implementing the rules for group health plans and health insurance coverage in the group and individual markets under the Patient Protection and Affordable Care Act [PPACA, P.L. 111-148] and *Health Care and Education Reconciliation Act of 2010* [HCERA, P.L. 111-152]. The interim final rules will have a substantial impact on the ability of small businesses to maintain affordable health coverage for themselves, their employees and families.

Section 1251 of PPACA, as modified by section 10103 of PPACA and section 2301 of HCERA, provides that certain group health plans or health insurance issuer in which an individual was enrolled on March 23, 2010 are subject only to certain provisions of PPACA; that is, grandfathered health plans. The regulating agencies have tremendous latitude to determine the requirements for grandfathered plans to maintain their status.

Unfortunately, the proposed interim final rules follow a rigid path in defining the requirements that will have a negative impact on small businesses, their employees, and their families.

On the one hand, parts of the proposed interim final rules are creditable. Prohibiting the elimination of benefits and changes in annual limits; the inclusion of good faith compliance language; allowing new employees and dependents into existing coverage plans; and, the prohibition of preexisting condition exclusions, rescissions and excessive waiting periods are all acceptable policy requirements under a reformed health insurance market.

On the other hand, barring small businesses from changing insurance carriers or increasing cost sharing percentages of any level severely limit the ability of employers to maintain their grandfathered status. Other requirements to maintain grandfather status, such as limits on the increases for fixed amount cost sharing, are simply out of touch with the individual and small group insurance markets since most employers have little control over the plan designs offered in the small group and individual market.

The interim final rules on grandfathered health plans attempt to reflect PPACA's intent to balance the objective of preserving the ability to maintain existing coverage with the goals of expanding access to and improving the quality of health coverage. While small businesses and their employees could have the most to gain from reasonable grandfathered health plan rules, the proposed interim final rules are tremendously complex and too restrictive, and could ultimately undermine the ability of small businesses to continue to provide existing health coverage for their employees.

There exists a significant amount of confusion among small-business owners about how the new health care law will impact their business. In more broad terms, small businesses were asked in NSBA's Mid-Year Economic Report to rate their understanding of the new law, and only 21 percent said they have a clear understanding while 79 percent said they have a limited or no understanding at all of how their business will be impacted. Given that this survey is among NSBA members who are active in the association and have been offered a good deal of education on the new law, this level of understanding is likely lower among all U.S. small businesses.

For these reasons, in combination with projected increased health care premiums for 2011 and the lack of any potential options for small businesses and their employees until 2014, NSBA is fearful that many small businesses are likely to be priced out of the insurance market with no alternatives and subsequently may choose to drop health coverage altogether.

NSBA suggests amending the interim final rules to allow for greater flexibility to maintain grandfathered status in the individual and small group markets and remove the inequity for individual and small group market plans vis-à-vis collectively bargained plans with respect to their ability to change insurance carriers without losing grandfathered status.

Rationale for Greater Flexibility in the Individual and Small Group Markets

NSBA surveys show small business owners continue to report dire consequences of rising health insurance costs in 2011. The overall trends are well documented; there is a direct correlation between the increase of health care premiums and the decrease in the number of small businesses offering health insurance over the past ten years. Moreover, the uncertainty from a sustained two-year economic recession and myriad new health care regulations exacerbate the already difficult fiscal planning most small businesses are facing. Sadly, the proposed interim final rules on grandfathered health plans offer no relief.

From an optimistic perspective, a recent administration white paper suggests how PPACA will benefit small businesses, including mandated free preventive care to gain healthier workers; eliminating the “hidden insurance tax” from the uninsured; implementing health care cost-containment; lowering administrative costs and providing more choices and competition through health insurance exchanges; instituting temporary small business tax credits; and, the including a free-rider provision for employers over 50 employees.¹

Unfortunately, nearly none of these provisions will have an immediate impact on small businesses. According to the Director of the Congressional Budget Office, Douglas Elmendorf, “the evidence suggests that for most preventive services expanded utilization leads to higher, not lower, medical spending overall,” which is likely to translate into increased premiums.² The individual mandate and free-rider requirements – provisions that aim to cover more of the uninsured and marginalize the “hidden tax” – do not take effect until 2014. Partial relief of the cost-shift from the uninsured may be realized through the Medicaid expansion, but that is unclear at present and unlikely to be reflected in near-term health care premiums. The majority of health care costs containment initiatives via health care delivery system reforms, the Independent Medicare Advisory Board, myriad pilots and demonstration projects, and comparative effectiveness research are all back-loaded and any cost saving benefits will not be realized for years. Other projected benefits – greater choices, competition and reduced administrative expenses – will not be realized or measured until state’s get their health insurance exchanges running in 2014.

Realistically, the only reform having an immediate impact on small businesses is the small business tax credits. However, according to CBO Director Douglas Elmendorf’s analysis, “a relatively small share (about 12 percent)” of people in the small group market would be eligible for the tax credits.”³ Additionally, in NSBA’s 2010 Mid-Year

¹ The White House, Stable Cost-Secure Choices-Quality Care: How Health Insurance Reform Will Help Small Business.

http://www.whitehouse.gov/assets/documents/Pages_from_Health_Insurance_Reform_PDF-8.pdf

² U.S. Congress, Congressional Budget Office. Letter from Director Douglas Elmendorf to Rep. Nathan Deal. August 7, 2009. <http://www.cbo.gov/ftpdocs/104xx/doc10492/08-07-Prevention.pdf>

³ U.S. Congress, Congressional Budget Office. Letter from Director Douglas Elmendorf to Sen. Evan Bayh. November 30, 2009. <http://www.cbo.gov/ftpdocs/107xx/doc10781/11-30-Premiums.pdf>

Economic Report of small business owners, when asked if their business will qualify for the small-business health care tax credit, only 10 percent said yes.

While small businesses are left working through an economic recession, dealing with increasing health care premiums, and coping with insufficient options until 2014, the sole component of PPACA that could provide affordable health coverage for small businesses and transition small businesses to the projected benefits in 2014 -- grandfathered health plan status – has turned out to be logistically unfeasible. The interim final regulations estimate that approximately 51 percent of all employer plans will lose their grandfathered status by the end of 2013. A range of estimates provided in the regulations all suggest that small employers would be hit harder than larger employers and individuals buying insurance in the individual market will have the hardest time maintaining their grandfathered status. The high-end estimates suggest that 80 percent of employer plans may lose their grandfathered status by the end of 2013.

With being forced to choose between increased health care premiums with limited health plan flexibility or having to drop coverage, NSBA is fearful that some small businesses will choose the later. There is nothing in PPACA or HCERA that precludes regulators from providing exceptional flexibility to individual and small group market plans.

This can be achieved through a broad spectrum of changes, including the most straightforward and sensible path of exempting the plans in the individual and small group market from grandfathered health plan rules until 2014. Other changes can be made as well to make incremental improvements, such as increasing the allowable changes to the percentage and fixed amount cost-sharing triggers and employer contribution levels.

Individual and Small Group Plan Equity with Collectively Bargained Plans

One glaring inequity in the interim final rules exists with respect to collectively bargained health plans. As an exception to other grandfathering requirements, changing the insurance carrier during the period of a collective bargaining agreement will not cause that health plan to lose grandfathered status. However, if a small business chooses to change health insurance carriers, then their grandfathered status will be lost.

Since small businesses shop their health plan coverage frequently, not allowing for a change in their insurance carriers severely undermines their ability to find affordable health coverage. The policy rationale for this inequity is dubious. Requirements for collectively bargained plans should also apply to the individual and small group markets to allow for small businesses to shop for identical insurance plans.

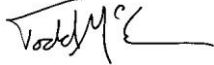
Conclusion

In order to incentivize small businesses to provide health insurance to their employees and families, proposed interim final rules must be amended to empower small businesses with supportive grandfather health plan rules.

If small businesses are to continue to be the driving force in our nation's economy, government officials must provide them with the resources and flexibility to succeed. By amending the proposed interim final rules to provide greater flexibility in maintaining existing coverage in the individual and small group market, and removing the inequity for individual and small group market plans vis-à-vis collectively bargained plans with respect to their ability to change insurance issuers without losing grandfathered status, more small business will be in the position to offer health care insurance to their employees.

Thank you for the opportunity to provide comments on the interim final rules for group health plans and health insurance coverage relating to status as a grandfathered health plan under PPACA. Please feel free to contact me with further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd O. McCracken", with a long horizontal flourish extending to the right.

Todd O. McCracken
President