



West Virginians for Affordable Health Care

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August 4, 2010

Office of Consumer Information and Insurance Oversight
Department of Health and Human Services
Attention: OCHO-9991-IFR
PO Box 8016
Baltimore, MD 21244-1850

Dear Office of Consumer Information and Insurance Oversight:

On behalf of West Virginians for Affordable Health Care (WVAHC), we are submitting the following comments on the interim final rule (IFR) and proposed final rule for group and individual health plans relating to grandfathered health plans under the Patient Protection and Affordable Care Act (ACA).

WVAHC is a state-wide, public interest organization representing the interest of consumers and working on systemic health care reform issues. Our web site, www.wvahc.org, contains more information about WVAHC including brief descriptions of the members of the WVAHC Board of Directors.

WVAHC supports the IFR with two exceptions. The rule takes significant and unprecedented steps to preserve one of the central tenants of the ACA: If you like the insurance coverage that you currently have, you get to keep it. The IFR strikes a careful balance that provides, but limits, employers' ability to respond to increase health insurance premiums by decreasing their contribution to their health insurance plan or increasing cost sharing by employees, while establishing clear limits that allow employees (and consumers in the individual market) to keep the health insurance that they like. These are extremely important protections for consumers, and WVAHC strongly supports incorporating these consumer protections into the final rule governing grandfathered plans.

WVAHC would like, however, to make two recommendations for changes in the final rule. First, we recommend that the Departments (Treasury, Labor and Health and Human Services) allow very small businesses greater flexibility in deciding how to deal with increased premiums, or even consider exempting very small businesses from the IFR altogether. The Departments concluded in

the IFR that only 33 percent of small employers would maintain their grandfather status by 2013, and thus keep the insurance that they currently have.

Currently, small businesses are less likely to provide employer sponsored insurance (ESI). The Kaiser-Health Research and Education Trust (HRET) *Employer Health Benefits 2009 Annual Survey* found that only 46 percent of employers with 3 to 9 employees offer ESI, while 72 percent of employers with 10 to 24 employees provide ESI, and 98 percent of employers with 200 or more employees provide ESI. We have attached a graph outlining these participation rates for employers by the number of employees they employ between 1999 and 2009. Basically, this graph illustrates that ESI rates held reasonable steady for all sizes of employers except for employers with nine to three employees. Their ESI participation rate has steadily declined over the ten year period, dropping ten percentage points in ten years (56 percent to 46 percent).

Not only are fewer small employers providing ESI and less likely than large employers to provide ESI, they are generally more likely to charge their employees higher premiums and greater cost sharing. The Kaiser-HRET survey found that small employers charged their employees a lower premium for single coverage. However, small employers charged their employees higher premiums for family coverage; are more likely (40 percent to 13 percent) to have an annual deductible greater than \$1,000; and charge their employees statistically ($p > .05$) higher deductibles when offering a health maintenance plan, a preferred provider plan and a point of service plan. Finally, during the last four years the growth in number of employees working for small employees who have a deductible of \$1,000 or more for a single plan has increased substantially greater than large employers. For small employers the growth has increased from 16 percent of employees to 40 percent. For large employers the growth has increased from 10 percent to 22 percent.

These differences in cost sharing for small employers' employees versus large employers' employees strongly suggest that these small employers have less flexibility to absorb increases in premiums, and therefore, warrant greater flexibility under the IFR. Our primary concern is for the very small employers -- those with ten or fewer employees. With the loss of grandfather status these employers would be required to begin providing clinically effective preventive services to their employees without cost sharing by the employees. The small increase in premiums to provide this service is likely to result in at least some small employers dropping their ESI. Additionally, beginning in 2014, non-grandfathered, small employers will be required to provide all essential services. While the broad outline of what constitutes essential services is established in the ACA, the details of these services, which are necessary for a small business to determine the cost of relinquishing their grandfathered status, have not been developed yet. It is unreasonable for small businesses to determine whether to forego grandfathered status without knowing the potential costs of relinquishing this status.

For these reasons WVAHC recommends that small employers -- those with fewer than ten employees -- be given greater flexibility in dealing with premium increases, or be exempt from the grandfather regulations altogether.

Secondly, while self-insured plans can change administrators without relinquishing their grandfathered status, and plans governed by a collective bargaining agreement may change insurance carriers until the end of the current collective bargaining agreement and maintain their grandfathered status, all other employers that change their insurance carrier lose their grandfather status. For consumers getting to keep the insurance coverage that they like is not tied to who the insurance carrier is. Whether it is WellPoint or Humana is not nearly as important to consumers as getting to keep the benefits that they currently have; keeping their current doctor and other provider; and not having to change the drug they are currently taking when the drug formulary changes.

WVAHC recommends that employers be allowed to change carriers and maintain their grandfathered status, if they meet the following conditions:

- Employers must comply with the IFR provisions that prohibit them from eliminating benefits; reducing the employers' share of premiums by more than five percentage points; substantially increasing copayments and deductibles; or increasing co-insurances.
- Employers cannot change the type of insurance product that they offer. For example, an employer who offered a preferred provider arrangement on March 23, 2010, they could not switch to a high deductible plan.
- The new provider network must be better than, or at least not "substantially different" from the existing provider network. Substantially different could be defined as ten percent variation from the existing provider network with the new provider network. This preserves the right of consumers to maintain their current primary care provider and other medical providers.
- Finally, the new drug formulary must be substantially similar to the existing drug formulary. Admittedly, defining substantially similar drug formulary will be a daunting task.

Frequently, employers decide to change carriers as a result of exceedingly high premium increase with the annual renewal. Employers then seek alternative bids for ESI. The IFR builds in an incentive for these employers to accept this exceedingly high premium increase.

As written, the IFR makes grandfathered employers a captured customer for their current carrier. The current carrier knows, for example, that any

competitor's bid must include the cost of providing clinically effective preventive measures without cost sharing by the employees, while current carrier's bid typically would not include this benefit in their renewal bid. Additionally, as was discussed previously, the details of the essential benefits are currently unknown. With this uncertainty, there will be a strong incentive for employers to maintain their grandfathered status even if it means in the short-term accepting higher than necessary premium increases.

In order to foster greater competition for the business of grandfathered employers, WVAHC recommends that employers be allowed to change carriers without relinquishing their grandfathered status provided they meet requirements that ensure that the employees, to the maximum extent possible, maintain their current benefits, type of insurance plan, current providers, and the drugs they are currently taking.

These two recommended changes to the IFR should not over shadow WVAHC's strong support for the IFR and the final rule. These rules provide unprecedented consumer protection in allowing employees, and consumers in the individual market, to maintain the insurance that they currently have. It is our sincere hope that the IFR will be strengthened and adopted as a final rule with these two recommendations. If you have questions or concerns about our position, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Perry Bryant", written in a cursive style.

Perry Bryant

Changes in Employer Sponsored Health Insurance by Number of Employees

