



**National
Business
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Health**

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Creative Health Benefits Solutions for Today, Strong Policy for Tomorrow

August 11, 2010

The Honorable Hilda L. Solis
Secretary
U.S. Department of Labor
Employee Benefits Security Administration
Office of Health Plan Standards and Compliance Assistance
Attention: RIN 1210-AB41
200 Constitution Avenue, N.W.
Room N-5653
Washington, DC 20210

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
Office of Consumer Information and Insurance Oversight
Attention: OCIO-4150-IFC
RIN 0991-AB66
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Room 445G
Washington, DC 20201

The Honorable Timothy F. Geithner
Secretary
U.S. Department of the Treasury
Attention: REG-114494-10
RIN 1545-BJ46
Internal Revenue Service
1111 Constitution Avenue, N.W.
Room 5205
Washington, DC 20224

Re: Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of Children to Age 26 under the Patient Protection and Affordable Care Act (Affordable Care Act).

Dear Secretaries Solis, Sebelius and Geithner:

The National Business Group on Health appreciates the opportunity to submit comments on the Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating

to Dependent Coverage of Children to Age 26 under the Patient Protection and Affordable Care Act (Affordable Care Act). We hope that our recommendations will assist you in your efforts to ease the transition, administrative burden and costs for group health plans and insurance providers to continue to provide affordable, high-quality coverage to beneficiaries and their adult dependent children up to age 26 under the Interim Final Rules.

The National Business Group on Health represents approximately 294, primarily large, employers (including 64 of the Fortune 100) who voluntarily provide health benefits and other health programs to over 55 million American employees, retirees, and their families.

In order to assist you with the administration of the Interim Final Rules, we make the following recommendations, which reflect the suggestions and concerns of our member companies:

- I. Reiterate that Plans Can Still Define Dependent Coverage;**
- II. Allow Plans to Request that Adult Dependent Employers Complete Affidavits Acknowledging that They Do Not Offer Health Insurance;**
- III. Clarify that Self-Funded Dental and Vision Plans are Exempt from the Requirement to Cover Dependents Up to Age 26; and**
- IV. Exempt Employees Who Pay for Their Adult Dependents' Out-of-Pocket Medical Expenses with Health Savings Accounts (HSAs) from Any Adverse Tax Consequences.**

I. Reiterate that Plans Can Still Define Dependent Coverage

Recommendation: The Departments should reiterate that plans can define dependent coverage to ensure that the Interim Final Rules do not encourage plans to restrict dependent coverage offerings.

The Interim Final Rules state that plans can only base coverage of dependents on:

1. The terms of the relationship of a child to plan participants; and
2. Whether or not the child is age 26 or older.

However, the Interim Final Rules also state that the “plan sponsors and issuers should be free to determine whether to cover children or which children should be covered by their plans and policies.” Many employers and insurers have already used their flexibility under current law to define dependents and extend coverage to certain foster children, stepchildren, children of domestic partners (where permissible), etc. Ensuring that plans keep this flexibility is vital to covering the highest amount of dependents possible and avoiding the unintended consequence of encouraging plans to limit dependent coverage offerings to only adopted and biological children.

II. Allow Plans to Request that Adult Dependent Employers Complete Affidavits Acknowledging that They Do Not Offer Health Insurance

Recommendation: The Departments should allow affidavits as proof that adult dependents do not have offers of other employer coverage, and are therefore eligible for their parents' coverage to ensure people maintain their current coverage under the Affordable Care Act.

The Interim Final Regulations state that for plan years beginning before January 1, 2014, “a grandfathered health plan that is a group health plan that makes available dependent coverage of children may exclude an adult child who has not attained age 26 from coverage only if the child is eligible to enroll in an employer-sponsored health plan other than a group health plan of a parent.” The Departments may also want to consider expanding this exemption for grandfathered plans beyond 2014 in order to ensure the greatest amount of beneficiaries “maintain their current coverage” under Section 1251 of the Affordable Care Act, a priority of the President, and reduce the administrative burden and costs on these plans and beneficiaries as the state insurance exchanges begin to operate in 2014. The Interim Final Rules do not currently define what proof is acceptable to verify when adult children are offered other employer-sponsored coverage. Employers and employees need clarification to ensure that adult dependents are not offered coverage when they are eligible under another employer-sponsored plan before January 1, 2014 in order to avoid dual enrollments, fraud and unnecessary penalties on either party.

III. Clarify that Self-Funded Dental and Vision Plans are Exempt from the Requirement to Cover Dependents Up to Age 26

Recommendation: The Departments should clarify that self-funded dental and vision plans are exempt from the requirements of grandfathered plans, including the requirement to cover adult dependents under age 26, if employees can separately elect coverage and pay separate premiums for dental and vision coverage.

Plans do not have to offer HIPAA excepted benefits to adult dependents under age 26, such as separate premium dental and vision plans, even when they offer them to dependents when these benefits are provided under a separate policy, certificate, or contract of coverage; are not an integral part of the health plan; and are not coordinated with any other benefits provided by the group health plan. Though the law exempts separate premium vision and dental plans from this requirement, it is unclear whether self-funded dental and vision plans are exempt even if the plans pay separately and have separate premium surcharges.

IV. Exempt Employees Who Pay for Their Adult Dependents' Out-of-Pocket Medical Expenses with Health Savings Accounts (HSAs) from Any Adverse Tax Consequences

Recommendation: The Departments should ensure that employees who use HSAs to pay for their adult dependents out-of-pocket medical expenses do not face any adverse tax consequences which will raise costs for parents that are only offered coverage under high-deductible health plans (HDHPs) coupled with HSAs.

Under earlier guidance on the Tax Treatment of Health Care Benefits Provided With Respect to Children Under Age 27 (Notice 2010-38), the IRS stated that employees can use Flexible Spending Accounts (FSAs) and Health Reimbursement Arrangements (HRAs) to pay for the out-of-pocket medical expenses of adult dependents up to age 26 without any adverse tax consequences. However, employees must pay taxes if they use Health Savings Accounts (HSAs) to pay for the out-of-pocket medical expenses of adult dependent children up to age 26, unless the adult dependents are otherwise considered dependents by the IRS for income tax purposes. The unintended consequence of the difference between this new definition and the existing income tax definition of dependents will punish the increasing number of Americans covered by HSAs and their dependents. Moreover, when there are different rules for features that seem very similar, the differences greatly complicate administration, confuse plan participants and undermine policy goals, including usefulness, and consumer-friendliness of health plans and plan documents.

A recent survey by America's Health Insurance Plans confirmed that more than 10 million Americans are covered by HSAs and that HSA ownership increased 25 percent since last year and every year since 2005. The Departments can ensure that parents and families enrolled in the increasingly popular HDHP and HSA market are treated equally with non-HSA eligible plans and are not penalized with additional taxes. In particular, the taxes on parents' HSA distributions for their adult dependents' out-of-pocket expenses will significantly impact those families who only have access to HDHP coverage coupled with HSAs.

Thank you for considering our comments and recommendations on the Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of Children to Age 26 under the Affordable Care Act. We look forward to continuing to work with you as you implement the various provisions of the new law. Please contact me or Steven Wojcik, the National Business Group on Health's Vice President of Public Policy, at (202) 585-1812, if you would like to discuss our comments in more detail.

Sincerely,



Helen Darling
President

cc: The Honorable Phyllis C. Borzi, Assistant Secretary, Employee Benefits and Security Administration

NATIONAL BUSINESS GROUP ON HEALTH

Mr. Jay Angoff, Director, Office of Consumer and Insurance Oversight
The Honorable Douglas H. Shulman, Commissioner, Internal Revenue Service