

LAW OFFICES
POTTS-DUPRE, DIFEDE & HAWKINS
CHARTERED
SUITE 1020

900 SEVENTH STREET, N.W.
WASHINGTON, D.C. 20001
(202) 223-0888

DAVID H. POTTS-DUPRE

FAX (202) 223-3868



August 11, 2010

Submitted Electronically via <http://www.regulations.gov>

The Honorable Phyllis Borzi
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room S-2524
Washington, DC 20210

Re: RIN 1210-AB41

Dear Ms. Borzi:

This office represents the International Brotherhood of Electrical Workers (IBEW) and is filing these comments on the interim final rule implementing Section 2714 of the Patient Protection and Affordable Care Act (PPACA) published by the Departments of Labor, Treasury, and Health and Human Services on May 13, 2010.

The IBEW first wishes to echo the comments and recommendations made by the National Coordinating Committee for Multiemployer Plans (NCCMP). Like the NCCMP, the IBEW recommends that (1) it be made clear that the required coverage to age 26 does not extend beyond an unambiguous and circumscribed definition of "child", (2) plans be granted discretion to adopt their own definitions and limitations with regard to adopted children, step-children, foster children, and the like, (3) plans be granted discretion to voluntarily extend coverage to other groups of children and (4) a uniform national standard be adopted defining when a child is considered an "adult".

In addition to the comments and recommendations of the NCCMP, the IBEW wishes to focus the attention of the agencies responsible for administering the PPACA on a particular piece of the law and ask that the agencies utilize all the discretionary authority they have to minimize the negative effects of this part of the law on group health plans. The part of the law that troubles the IBEW is the requirement that group health plans provide coverage for children to age 26 even where the child is employed.

Unions and unionized employers have always been at the forefront in offering health coverage to employees. They believe health coverage (and pension coverage) is a moral imperative in the relationship between an employer and its employees. That view is clearly not held in the non-union sector. The IBEW and its management counterpart, the National Electrical Contractors Association, have always competed against non-union companies that do not provide any health coverage to their employees and, as a result of those cost savings, are able to undercut job bids from employers that provide health coverage. The IBEW has long promoted mandatory employer provided health care coverage because it believes such coverage is the employer's responsibility and because it would even the playing ground. This provision is inherently destructive and will lead to a loss of health coverage as employers not providing health coverage gain work at the expense of those employers providing coverage.

The PPACA, however, has a provision that could, in some instances, require a union sponsored group health plan to provide coverage to a child who is working in the non-union sector and is not provided health coverage by his or her employer. It is fundamentally unfair to ask the unionized-employer sector, whose interests are more closely aligned with the goals of the PPACA, to subsidize the non-unionized-employer sector, whose employers typically go to great lengths to minimize spending on employee benefits.

The law and the interim final rule adopts a special rule for grandfathered health plans that permits those plans, until the plan year beginning on or after January 1, 2014, to deny coverage to an adult child if the adult child is "eligible" to enroll in an employer sponsored health plan. This temporary relief, however, will do nothing for plans if the adult child goes to work for a non-union electrical contractor or any other employer that refuses to provide health coverage. Further, after January 1, 2014, it will make no difference if the adult child is eligible for employer sponsored coverage or not as plans will be required to cover these individuals regardless whether coverage is offered.

The IBEW recognizes that the agencies are constrained to an extent by the language of the law. Nevertheless, the IBEW would ask that the agencies consider whether they have any

discretion to mitigate the requirement that responsible employers and responsible plans shoulder the financial burden for those irresponsible employers.

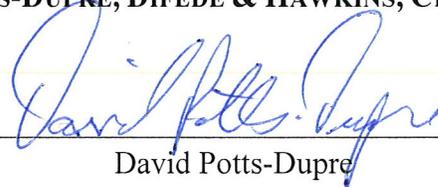
For instance, the agencies do have discretion with regard to the issue whether an adult child is “eligible” to enroll. A grandfathered health plan, in many, if not most, instances, will provide better coverage than a non-grandfathered health plan. An adult child may choose not to apply for employer provided coverage if the coverage he or she gets through the parent’s grandfathered plan is superior and the individual may feel that the grandfathered plan will not know he or she was “eligible” for coverage under the employer plan. Since the grandfathered plan cannot know whether an adult child is eligible for coverage, the regulation should place the clear burden on the adult child or the participant to prove that the adult child is not “eligible to enroll in an eligible employer-sponsored health plan”. The IBEW recommends that grandfathered plans be permitted to adopt a presumption that the adult child is employed and eligible for employer provided coverage unless and until the adult child rebuts that presumption. The adult child and the participant parent should be required to submit a statement advising that the individual is not employed and the grandfathered plan should have recourse to recover benefits or premiums paid with respect to the adult child from the participant and the adult child if the statement is false. If the adult child is employed, the adult child should be required to submit a statement from his or her employer verifying that the individual is not eligible for employer provided health coverage and the grandfathered plan should have recourse to recover benefits or premiums paid with respect to the adult child from the employer, the parent participant and the adult child if the statement is false.

Thank you for considering the IBEW’s comments. If you have any questions, please let me know.

Sincerely,

POTTS-DUPRE, DIFEDE & HAWKINS, CHTD.

By: _____



David Potts-Dupre