



**BlueCross BlueShield
Association**

An Association of Independent
Blue Cross and Blue Shield Plans

December 17, 2010

The Honorable Phyllis C. Borzi
Assistant Secretary, Employee Benefits Security Administration
U.S. Department of Labor

Jay Angoff
Director, Office of Consumer Information and Insurance Oversight
U.S. Department of Health and Human Services

The Honorable Michael F. Mundaca
Assistant Secretary of the Treasury
U.S. Department of the Treasury

Attention: OCIO-9991-IFC2

Submitted via the Federal Regulations Web Portal, <http://www.regulations.gov>

Re: Comments on the Amended Interim Final Rule Relating to “Grandfather” Status
Under the Affordable Care Act, RIN 0950-AA17

Dear Assistant Secretary Borzi, Director Angoff, and Assistant Secretary Mundaca:

The Blue Cross and Blue Shield Association (“BCBSA”) appreciates the opportunity to provide comments to the Departments of Health and Human Services, Labor, and the Treasury (“the Departments”) regarding the Amended Interim Final Rule (“Amended Rule”) for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act (“ACA”). 75 Fed. Reg. 70114 (November 17, 2010).

BCBSA is a national federation of 39 independent, community-based and locally operated Blue Cross and Blue Shield Plans (“Plans”) that collectively provide healthcare coverage for more than 98 million members – one-in-three Americans.

We thank the Departments for the Amended Rule and the additional guidance they have provided to help group health plans and insurers understand how to address practical implementation issues related to the Interim Final Rule.

We are providing additional comments below, based on the Departments’ request for comments.

1. General Provision that Change in Insurers Should Not Affect Grandfather Status

Plans support the changes in the Amended Rule. The Interim Final Rule provided that a change in insurers or policies automatically would result in a change in grandfather status,

even if no substantive changes were made to the policy. BCBSA was concerned that this rule treated insured group health plans less favorably than self-funded plans, who were permitted to change third party administrators and maintain grandfather status, as long as no changes were made that otherwise triggered the grandfather rules. In addition, group health plans or insurers sometimes change insurers or policies for administrative reasons, such as when an insurer withdraws from the market and is succeeded by a different insurer, or due to a business reorganization.

The Amended Rule provides a practical solution for these situations and puts group health plans – whether insured or self-funded – on the same footing. Under the Amended Rule, group health plans must analyze whether a triggering change has occurred that could affect grandfather status – rather than simply a change in the policy number or insurer’s name.

Recommendation: We support this change to the Interim Final Rule. When issued, the final Rule should include a provision stating that a change in insurers does not, by itself, result in a change in grandfather status.

2. Any Change in Policy Alone Should Not Affect Grandfather Status

The Amended Rule states that a plan does not cease to be grandfathered merely because the plan enters into a new policy, certificate, or contract of insurance and cites examples of a plan changing insurers or an insurer issuing a new policy. Previously, the Interim Final Rule requested comments as to whether a change in the type of policy (for example, a change from HMO to PPO) should trigger a change in grandfather status. It is not clear if the Amended Rule was intended to address these situations, although we believe this action simply would be a change in policies that should not cause a change in grandfather status where there is no other substantive change.

We believe that any change in policy, whether a change in insurer, change in policy of the same type of coverage, change in policy to a different type of coverage, or change from self-funding to insured (or vice versa) – should fall under the Amended Rule. For these changes, an insured group or individual should look to whether entering into the new policy included a change that otherwise would trigger a change in grandfather status under the events listed in the Interim Final Rule.

Recommendation: The final Rule should make it clear that a change of policies within the same insurer does not affect grandfather status as long as there is nothing in the new policy that would cause a change in grandfather status.

3. Effective Date for the Amended Rule

The Amended Rule provides that a change in insurers, in and of itself, will not cause a change in grandfather status without a substantive change as listed in the Interim Final Rule otherwise occurring. However, the Amended Rule only applies to a change in insurers or policies with an effective date after November 15, 2010 (when the Amended Rule was available for public inspection). The Departments specifically asked for comments on this selected effective date.

Some Plans feel that the Amendment to the Interim Final Rule should apply retroactively to March 23, 2010, so that it applies to all group health plans. They argue that the rationale for

the change in the first place was that the Departments recognized that simply changing insurers should not trigger a change in grandfather status, where substantive benefits remained the same. Further, plan participants would still be protected where a policy makes a change that the Interim Final Rule identifies as affecting grandfather status. Thus, these Plans conclude that there is no basis to establish a cutoff date for the Amendment to the Interim Final Rule.

Other Plans, however, feel that the Amended Rule should not apply retroactively because it would be difficult to administer and could cause confusion in the marketplace. Plans and employers selecting to retain grandfather status for employers who switched insurers prior to November 15, 2010 not knowing there would be future consequences would have to be able to identify whether an employer's group health plan would be entitled to grandfather status. This means the Plan would have to gather the information needed to for this inquiry and employers would have to provide the information. This is a considerable administrative task.

Recommendation: The Departments should evaluate the effective date taking into account these competing considerations. We would be happy to provide additional insights on this issue if needed.

* * *

We appreciate your consideration of our comments. If you have any questions, please contact Kris Haltmeyer at (202) 626-4814 or kris.haltmeyer@bcbsa.com.

Sincerely,



Justine Handelman
Executive Director, Legislative and Regulatory Policy
Blue Cross Blue Shield Association