



December 17, 2010

Office of Consumer Information and Insurance Oversight
U.S. Department of Health & Human Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201
Attn: OCIIO-9991-IFC2

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
U.S. Department of Labor
200 Constitution Avenue, NW.
Washington, DC 20210
Attn: RIN 1210-AB42

Internal Revenue Service
CC:PA:LPD:PR (REG-118412-10)
Room 5205
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

RE: Amendment to the 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, Request for Comment; 75 Federal Register 70114, November 17, 2010

Dear Director Angoff, Assistant Secretary Borzi and Deputy Commissioner Miller:

AARP is pleased to comment on the Department's *Amendment to the Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan* under the Affordable Care Act (ACA). This Amendment, published in the *Federal Register* on November 17, 2010, by the Departments of Treasury, Labor and Health and Human Services, permits insured group health plans to make certain changes without having to relinquish their grandfathered status.

Under the Amendment, an insured group health plan will not have to relinquish grandfather status merely because the plan (or its sponsor) enters into a new policy, certificate or contract of insurance. To maintain its grandfather status, however, a group plan that enters into a new policy, certificate or contract must provide documentation of

plan terms (including benefits, cost sharing, employer contributions and annual limits) sufficient to determine whether a change causing a cessation of grandfathered health plan status has occurred.

AARP supports the Amendment to the June interim final regulations with qualifications. First, AARP supports the Departments' decision to apply the Amendment generally on a prospective basis only. Retroactive application could have led to confusion for both employers and plan members. It could also create concerns on the part of stakeholders that other ACA regulations may be changed retroactively.

Second, AARP agrees that group health plans should not have to relinquish grandfathered status on the basis of an administrative change that does not affect the benefits or costs of a plan. Clearly, a need arises on occasion to change carriers if the employer's existing carrier is withdrawing from the market. AARP recognizes that the June interim final rule may inadvertently interfere with an employer's efforts to hold down premiums by impeding their ability to negotiate a less expensive premium with another insurer or obtain another product of the same insurer that offers substantially the same benefits, cost-sharing, employer contributions and annual limits. AARP also appreciates the Departments' interest in leveling the playing field for insured and self-insured group health plans so that insured plans can change carriers in the same manner as a self-insured plan can change third party administrators. For these reasons, we believe that the rules changes made by the Amendment are warranted.

However, AARP believes that certain modifications should be made to the Amendment to ensure that it does not result in shortchanging enrollees of affected group health plans. AARP believes that a group health plan that changes carriers should not be permitted to retain grandfathered plan status if the change in carriers also results in a significant change to the plan's network of health care providers. If plan members are generally required by the new contract to seek out different physicians, for example, that would seem to most plan members to be a sufficiently major change, and therefore sufficient to trigger the plan's loss of grandfather status. Second, we support having the Amendment's application be sunset December 31, 2013, and that the Secretary revisit this issue if conditions warranted in 2014. Between now and 2014, the Amendment will give employers the needed flexibility to negotiate terms with insurers without necessarily having to relinquish their grandfather status. However, AARP believes that an overly broad application of grandfather status should not be used as a means to avoid complying with ACA provisions.

Finally, AARP believes that the Amended rule should require that the plan sponsor provide timely notification to group health plan members (i.e., participants and beneficiaries) of the change in policy, certificate or contract of insurance whether or not the change results in the loss of grandfather status. Plan members may need to contact the carrier directly, for example, in the event of a question related to their benefits or to file an appeal of an adverse coverage decision. (Other forms of notice, such as a new plan membership card, are sometimes delayed in reaching enrollees until after the new plan year begins.)

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Thank you for the opportunity to comment on this important matter. If you have questions, please contact Leah Hirsch on our Government Relations staff at (202) 434-3778.

Sincerely,

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

David Certner
Legislative Counsel and Legislative Policy Director
Government Relations and Advocacy