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By U.S. Mail

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Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
Attn: RIN1210-AB42
200 Constitution Avenue N.W.
Washington D.C. 20210

Office of Consumer Information and Insurance Oversight
Department of Health and Human Services
Attn: OCIO-9991-IFC
P.O. Box 8016
Baltimore, MD 21244-1850

Internal Revenue Service
CC:PA:LPD:PR (Reg-118412-10)
Room 5205
P.O. Box 7604
Ben Franklin Station
Washington D.C. 20004

**Re: Further Comments on Interim Final Rule Regarding
Status of Grandfathered Plans**

To Whom It May Concern:

On June 21, 2010, we submitted a comment on the Department's interpretation and application of the delayed effective date provisions in Act Section 1251(d) to Taft-Hartley plans. We now wish to comment on the impact of the "maintenance of grandfathered status" provisions in the new regulations on a Taft-Hartley plan's compliance with the Mental Health Parity and Addiction Equity Act of 2008 ("Parity Act").

As you know, the regulations specify that grandfathered status will be lost if a plan makes certain adverse changes in its benefit programs. For example, grandfathered status will be forfeited if a plan increases a participant's cost-sharing percentage, or increases the amount of a deductible. The examples given (in particular, the one concerning inpatient surgery) illustrate that the prohibitions can be benefit-specific. In other words, an increase in the coinsurance percentage or the deductible would trigger a loss of grandfathered status whether the change applied to all benefits or to just a particular class of services.

As you also know, the Parity Act requires a plan that provides mental health and substance abuse benefits to amend that program so that it does not have less favorable terms and conditions than those applicable to the plan's medical benefit program. The Parity Act provides a delayed effective date for Taft-Hartley plans.¹⁷ Accordingly, many Taft-Hartley plans have not yet adopted amendments required by the Parity Act, and will be making those amendments later this year or in following years.

In the Taft-Hartley plans that we represent, mental health and substance abuse benefits are provided through a "gatekeeper" program. The gatekeeper is an entity that maintains a network of mental health and substance abuse treatment providers. To receive benefits under the program a participant must contact the gatekeeper to arrange for services from a network provider. The gatekeeper determines the type and amount of services that the participant may receive.

If the participant uses the services of the gatekeeper, the plan pays 100% of the contracted rate charged by the network provider. There is no deductible. If the participant does not use the gatekeeper, no benefits are payable by the plan, even if the participant receives services from a provider who is part of the gatekeeper's network.

To comply with the Parity Act, the plans' mental health programs will be amended so that all mental health and substance abuse services will be treated in the same way as hospital and medical services. Accordingly, there will no longer be a gatekeeper (although the plans will still contract with the gatekeeper's provider network).

As with the medical programs, a participant under the amended mental health programs will be able to visit both network providers and non-network providers. Also as with the medical programs, if the visit is to a network provider the plans will pay 80% of the contracted service fee.

¹⁷Section 512(e)(2) of P.L. 110-343 states that for Taft-Hartley plans the Parity Act becomes effective for plan years beginning after the later of (a) the expiration of the last collective bargaining agreement that was in effect when the Parity Act was adopted, or (b) January 1, 2010.

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For non-network providers, the plans will pay 50% of the usual and customary fee for the service received.

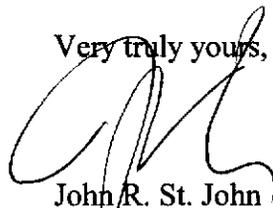
Further, the annual deductible for medical benefits will now include mental health and substance abuse benefits. In other words, there will be a single deductible that covers both programs.

However, as the regulations are currently written, the foregoing amendments to the plans' mental health programs would cause the plans to lose grandfathered status.^{2/} The participants' coinsurance amount for network providers will increase from 0% to 20%, and there will be a deductible where none currently exists.

The amendments needed to comply with the Parity Act will increase the cost of the mental health programs currently maintained by the Taft-Hartley plans that we represent. This is because any savings resulting from the increase in the coinsurance percentage or inclusion in the deductible will not offset the increased utilization that is expected to result from the elimination of the gatekeeper feature. It would indeed be ironic if these amendments not only increased the cost of the plans, but also caused them to lose grandfathered status.

We believe that the rules regarding maintenance of grandfathered status are intended to apply only to changes which are voluntarily adopted, and not to changes which are required by other federal legislation. Accordingly, we request that the regulations be revised to provide that grandfathered status will not be lost by the adoption of amendments which are designed to comply with the Parity Act.

Very truly yours,



John R. St. John

Of ST. JOHN, WALLACE, BRENNAN & FOLAN LLP

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^{2/}This assumes that the Departments continue to hold that the delayed effective date in Section 1251(b) does not apply to self-funded Taft-Hartley plans, and that all Taft-Hartley plans are subject to the provisions of the Act that are applicable to grandfathered plans. In our previous comment we argued that the benefit changes required by the Act should not apply to Taft-Hartley plans until after the expiration of the last collective bargaining agreement that was in effect before March 23, 2010.