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Member
Admitted in SC

August 10, 2010

VIA ELECTRONIC MAIL

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

Re: RIN 1210-AB42; OCIIO-991-IFC

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

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Raleigh

Dear Sir or Madam:

We submit this response to the request for comments on the interim final regulations implementing the rules for group health plans and health insurance coverage in the group and individual markets under provisions of the Patient Protection and Affordable Care Act (“PPACA”) regarding status as a grandfathered health plan. The request was published by the Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Office of Consumer Information and Insurance Oversight, Department of Health and Human Services (the “Departments”) in the *Federal Register*, Vol. 75, No. 116, on June 17, 2010.

Specifically, the Departments requested comments on whether the following changes should result in cessation of grandfathered health plan status for a plan or health insurance coverage: (1) changes to plan structure; (2) changes in a network plan’s provider network; (3) changes to a prescription drug formulary; (4) or any other substantial change to the overall benefit design.

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The interim final regulations implement rules governing when a grandfathered health plan, a group health plan or group or individual health insurance coverage with individuals enrolled on March 23, 2010, loses grandfathered status as a result of changes to the operation or administration of the plan. The determination under the rules of the interim final regulations is made separately with respect to each benefit package available under a group health plan or health insurance coverage.

Pursuant to the interim final regulations, if an employer or employee organization enters into a new policy, certificate, or contract of insurance after March 23, 2010, then that policy, certificate or contract of insurance is not a grandfathered health plan with respect to the individuals in the group health plan. The interim final regulations provide that the determination under the rules thereof is made separately with respect to each benefit package made available under a group health plan or health insurance coverage.

Additionally, grandfathered status is lost if a plan sponsor or issuer: eliminates all or substantially all benefits to diagnose or treat a particular condition, increases cost-sharing requirements or copayments above a certain threshold amount, or decreases annual limits for coverage from that available on March 23, 2010. For example, a plan's elimination of all benefits for cystic fibrosis would cause the plan to cease to qualify as a grandfathered health plan.

The interim final regulations further provide that the elimination of all or substantially all benefits to diagnose or treat a particular condition includes the elimination of benefits for any necessary element to diagnose or treat a condition. An example in the interim final regulations illustrates that if a plan provides benefits for a particular mental health condition, the treatment for which is a combination of counseling and prescription drugs, the plan would cease to be a grandfathered health plan if it eliminates benefits for counseling, an element that is necessary to treat the condition, because the plan would be considered to have eliminated substantially all benefits for the treatment of the mental condition under the interim final regulations.

In response to the interim final regulations, the following requests for clarification are submitted regarding changes to plan administration:

1. Division of Plan into Separate Plans

Clarification is requested as to whether a division of a plan into separate plans would cause a loss of grandfathered status, where the aggregate cost-sharing and provided benefits of the separately administered plans would remain proportionately the same as before the division. For example, it is unclear under the interim final regulations whether a self-insured group health plan that administers medical, dental, vision and prescription drug benefits separately under single plan could segregate the benefits into separate plans without causing a loss of grandfathered status.

We believe the better interpretation or application of the PPAACA is that such a change to the overall benefit design would not cause a loss of grandfathered status. This is especially the case where, in the aggregate, the costs and benefits provided under the plan remain the same before and after the division and thus the division of the plan into separate plans is one only in form and not in substance.

2. Itemized Premium Charges

Similarly, the rules under the interim final regulations are unclear as to whether premiums may be itemized to specific benefits provided under a single plan without causing a loss of grandfathered status. For example, it is unclear under the interim final regulations whether a self-insured group health plan would lose grandfathered status if it changed its premium structure from one in which a single premium was charged for all of the available coverage types (e.g., health, vision, dental or prescription drug coverage) to one in which a separate premium is charged (and a separate benefit election is offered) for each coverage type provided under the same plan, where the overall premium remains the same. We believe that grandfathered status should not be lost merely because premiums charged for various benefits under a single plan are itemized, rather than charged in the aggregate.

3. Restructuring Tiered Benefits

Alternatively, it is unclear whether grandfathered status would be lost if a self-insured group health plan recategorized tiers of coverage, for example, from former tiers for single and family to new categories for employee only, employee + spouse, employee + dependents (other than spouse), and employee + family. The plan would be recategorized to more closely match the cost, but the same benefits would accrue to persons covered by the plan before and after the tier restructuring. Therefore, grandfathered status should not be lost where the same benefits are provided without an increase in cost or change in cost-sharing in violation of the rules under the interim final regulations.

4. Addition of Preauthorization Requirement

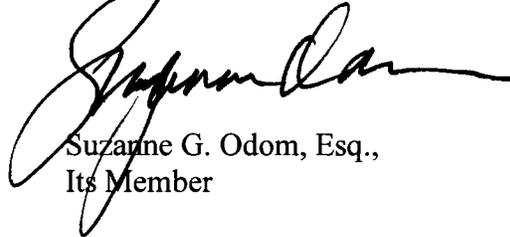
In addition, it is unclear whether grandfathered status would be lost if a group health plan is amended to change the claim administration procedures for certain benefits under the plan. In particular, it is unclear under the interim final regulations whether adding a preauthorization requirement for other covered benefits under the plan (preauthorization previously was required for some, but not all benefits) would constitute an elimination of benefits and thus cause the plan to cease to be a grandfathered health plan. We believe that such a procedural change should not constitute the elimination of benefits that would result in a loss of grandfathered status because coverage for the diagnosis or treatment remains the same. All that would be changing is the timing for reviewing the claim to determine if it is a covered expense.

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We appreciate this opportunity to provide the foregoing comments regarding the interim final regulations. Should you have any questions, please do not hesitate to contact me by phone at (803) 540-2018 or by email at sgodom@nexsenpruet.com.

Very truly yours,

NEXSEN PRUET, LLC

A handwritten signature in black ink, appearing to read "Suzanne Odom", written over the typed name and title.

Suzanne G. Odom, Esq.,
Its Member

SGO/BBM