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# PUBLIC SUBMISSION

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**Docket:** HHS-OS-2010-0015

Group Health Plans and Health Insurance Coverage: Interim Final Rules for Relating to Status as a Grandfathered Health Plan under the Patient Protection and Affordable Care Act

**Comment On:** HHS-OS-2010-0015-0001

Group Health Plans and Health Insurance Coverage: Interim Final Rules for Relating to Status as a Grandfathered Health Plan under the Patient Protection and Affordable Care Act

**Document:** HHS-OS-2010-0015-DRAFT-0027

Comment on FR Doc # 2010-14488

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## Submitter Information

**Name:** Jennifer Boyer

**Organization:** WellPoint, Inc.

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## General Comment

Dear Secretary Sebelius:

WellPoint, Inc. (WellPoint) appreciates this opportunity to respond 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," published on May 5, 2010. We share the goal of the Department of Health and Human Services (HHS) of preserving coverage for our members who like what they have today. Thus, we offer suggestions to ensure that the regulations promote continuity of coverage for our members, particularly during this time of transition to the new requirements under the Affordable Care Act (ACA).

WellPoint is the largest publicly traded commercial health benefits company in terms of membership in the United States with 33.8 million medical members at March 31 2010, and 1.1 million Medicare enrollees. WellPoint is an independent licensee of the Blue Cross Blue Shield Association and serves its members as the Blue Cross licensee for California; the Blue Cross and Blue Shield licensee for Colorado, Connecticut, Georgia, Indiana, Kentucky, Maine, Missouri (excluding 30 counties in the Kansas City area), Nevada, New Hampshire, New York (as Blue Cross Blue Shield in 10 New York City metropolitan counties and as Blue Cross or Blue Cross Blue Shield in selected upstate counties only), Ohio, Virginia (excluding the Northern Virginia suburbs of Washington, D.C.), and Wisconsin; and UniCare Life and Health nationwide.

WellPoint appreciates this opportunity to offer our suggestions to help ensure that consumers who like the health insurance coverage they have today are able to keep it. Should you have any questions or wish to discuss our comments further, please contact Jennifer Boyer at 202-628-7831 or Jennifer.Boyer@WellPoint.com.

Sincerely,

Elizabeth P. Hall  
Vice President, Public Policy

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## Attachments

**HHS-OS-2010-0015-DRAFT-0027.1:** Comment on FR Doc # 2010-14488



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Suite 425  
Washington, DC 20005

**Elizabeth P. Hall**  
Vice President  
Public Policy

Submitted via Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov)

August 12, 2010

The Honorable Kathleen Sebelius  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, DC 20201

ATTENTION: OCIIO-9991-IFC

**RE: Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan**

Dear Secretary Sebelius:

WellPoint, Inc. (WellPoint) appreciates this opportunity to respond 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,” published on May 5, 2010. We share the goal of the Department of Health and Human Services (HHS) of preserving coverage for our members who like what they have today. Thus, we offer suggestions to ensure that the regulations promote continuity of coverage for our members, particularly during this time of transition to the new requirements under the Affordable Care Act (ACA).

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Our specific comments on the interim final rule (IFR) are below.

## ***Changes Causing Cessation of Grandfathered Status***

WellPoint appreciates that HHS has afforded employers and health insurance issuers some flexibility in maintaining grandfathered status. Plans must balance continuity of benefit design with consumers' desire to curb the rising costs of health care. Employers and individuals, in seeking to limit or reduce annual premiums, often elect to increase cost sharing or make other benefit changes. An increasing number of employers are waiving cost sharing to encourage the use of certain benefits and services, while raising cost sharing to discourage inappropriate utilization of other benefits and services. While the IFR recognizes these issues and permits limited changes, WellPoint encourages HHS to consider affording plans greater flexibility in making changes without loss of grandfathered status. The magnitude of changes permitted under the rule falls far short of the actual changes employers and individuals commonly elect today. From an actuarial standpoint, the changes permitted would allow members to buy down only one to two percent of premium. This minimal impact could hinder efforts of employers and members to control costs. In addition, we seek clarification that the regulation allows for a member in the individual market to revert to a plan that has grandfathered status if that member did not understand the impact of choosing another plan. Permitting such flexibility seems prudent, reasonable and in the spirit of the ACA.

Additionally, we offer the following specific recommendations with respect to maintenance of plans' grandfathered status.

### ***Benefit Carve Outs***

The IFR limits the changes that a health insurance plan or issuer may make while retaining grandfathered status of the plan or coverage. However, in certain cases, it is not clear how the rule defines a "plan" or "health insurance coverage." Increasingly, health plans carve out certain benefits, such as pharmacy or mental health benefits, from the major medical benefits. In many cases, these benefits are designed and managed separately by different administrators or vendors. For instance, an employer may contract with three separate entities for administration of a health plan: a health insurance company, a pharmacy benefit manager, and a behavioral health manager. In these cases, because the health insurance company has a contract for the medical benefits only, it will have no knowledge of or control over the benefit design decisions made by the PBM or behavioral health manager. It can only ensure compliance with grandfathered status requirements with respect to the medical benefits. Thus, where carve outs exist, each benefit package (i.e., medical and any carve outs) should be treated separately and distinctly for the purposes of determining compliance with grandfathered status. For example, if the PBM increased cost sharing for the pharmacy benefit beyond what is permissible, that change would not, in and of itself, result in the loss of grandfathered status for the medical benefit plan.

### ***Changes in the Course of Business***

Health insurance issuers and health plans make many changes in the day-to-day course of business that are meaningful in promoting patient safety and quality care, but that do not have a material effect on benefit design. For example, health insurers make changes to medical policy as new evidence is available about the safety and efficacy of treatments, and revise formularies when new products such as drugs with improved risk profiles or more affordable generic alternatives become available. Insurers also regularly modify provider networks to expand access and affordability, ensure inclusion of high quality providers, and address changes (e.g., providers moving in and out of the area). While the IFR did not include these changes among

those that would result in cessation of grandfathered status, HHS did specifically request comments on whether they should be taken into consideration. WellPoint strongly recommends that these types of changes do not result in the loss of a plan's grandfathered status.

#### *Maintenance of Employer Contribution to Premium*

The IFR specifies that a reduction in an employer's contribution toward employee health insurance of more than 5 percentage points (if based on cost) or 5 percent (if based on a formula) would result in a loss of grandfathered status for that plan. Unlike the other changes that would negate grandfathered status, such as higher-than-permitted increases in cost sharing, health insurance issuers do not control and would not necessarily have knowledge of changes to an employer's contribution to premium. As a result, a health insurance issuer could unknowingly operate a grandfathered plan that is not in compliance with this regulation. WellPoint suggests that HHS permit issuers to rely on the representations of group plans as to their compliance with this requirement. Health insurance issuers may contractually require the group health plans they insure to provide advance notice of any change that would adversely affect continued grandfathered status, but the health insurance issuers cannot otherwise reasonably police the actions taken by groups nor should they be responsible for those actions where a notice of change was not provided.

#### *Addition of New Employees to Grandfathered Plans*

The regulation permits group health plans that are grandfathered plans to enroll new employees (whether newly hired or newly enrolled) and maintain grandfathered status. WellPoint requests that HHS clarify that this continuation of grandfathered status also applies to association health plans that add new employers, and by extension new employees, to their plan. Association health plans are offered to groups comprised of multiple employers that are members of an association. Generally, employees of the member employers are eligible to enroll in the association health plan. Employers may newly join the association over time as new companies are formed, or employers' circumstances change. The decision to join the association itself may be unrelated to the availability of health insurance benefits. Employers and their employees new to an association should be treated as new employees in a firm are treated under this rule. That is, they should be permitted to enroll in a grandfathered health plan without causing it to lose its grandfathered status.

In addition, the IFR does not address employers who will offer both grandfathered and non-grandfathered plans. For example, an employer offers a single plan option today that is a grandfathered plan, but in 2011 desires to add a new plan option that will not be grandfathered. At some point in the future, the employer wishes to cancel the non-grandfathered plan, for instance due to low take-up or because the insurer is discontinuing the product. The closure of the non-grandfathered plan would shift enrollees from the non-grandfathered plan into the grandfathered plan. WellPoint would like to confirm that in this and similar situations, the grandfathered plan is able to retain its grandfathered status (assuming it is otherwise compliant with cost sharing and other requirements in the IFR).

#### ***Merger or Consolidation Between Health Insurance Issuers***

The regulation does not appear to permit continued grandfathered status for benefit plans of a merged or dissolved insurer in the event of a corporate merger or consolidation. By way of example, a holding company owns two insurance companies in the same state, one is an indemnity company (Company A) and one is an HMO (Company B). The holding company

desires to merge Company B into Company A. After the merger, Company A will issue both indemnity and HMO plans. All plans will be identical to the plans sold prior to the merger; the only difference is the insurance license under which the HMO plans will be issued and the identification of the issuer in the HMO plans. Another example is where a holding company owns two HMOs and desires to merge the HMOs together or form a new HMO into which the legacy HMOs will be merged. Afterwards, the surviving (or new) HMO will issue the exact same HMO plans as were issued prior to the merger or consolidation. For either example, WellPoint believes that continued grandfathered status should exist. Despite the fact a “new” insurer is issuing the plans of the merged or dissolved “old” entity, provided that the benefits, cost sharing, and fundamental operations of the “old” issuer and plan are maintained, the “old” plans now issued by the surviving or “new” entity should continue to have grandfathered status.

### ***Transitional Rules***

Currently, the regulation includes as grandfathered plans those plans that made changes on or before March 23, 2010, even if changes were effective after that date. Other plans that adopted changes after March 23, but prior to the issuance of the regulation, are permitted to revoke those changes at the start of the next plan year to be considered grandfathered. This narrow transition window does not adequately reflect the lead time that plans need to make changes for the start of a new plan year.

For instance, WellPoint issued renewals in June for plan years beginning in late August and early September. Prior to that issuance, our staff engaged in significant preparation and actuarial analysis to arrive at a benefit package that met our members’ needs. As currently proposed, these plans would not be eligible for grandfathered status if any of the changes went beyond what is permitted under this rule. However, it would not have been feasible for WellPoint to delay making changes to and issuing renewals for these plans until after the release of the regulations in mid-June. And at the time of release of the regulations, we had to move forward with the planned changes.

Adding further complexity is the concurrent implementation of benefit changes to comply with federal mental health parity requirements which were effective July 1, 2010. The Department of Labor issued an IFR in February, but later modified some of the requirements in guidance released on July 1. As a result, we made changes to plans with renewal dates between July 1 and September 22 that, while necessary to comply with mental health parity requirements, may result in the loss of grandfathered status.

We recommend that HHS expand the transition period during which plans would be eligible for grandfathered status to include plans that made changes through at least September 22, 2010. For individual insurance, enrollees would be considered enrolled in a grandfathered plan if they enrolled prior to September 23, 2010. For groups, plans would be considered grandfathered based on the benefits in place for plan years starting prior to September 23, 2010.

### ***Disclosure of Grandfathered Status***

To maintain grandfathered status, plans must include a statement, in any plan materials provided to a participant describing the benefits provided under the plan, that the plan is a grandfathered plan. WellPoint recommends that HHS provide greater specificity of the plan materials in which the disclosure notice must be included. It would not be practical, feasible, or cost-effective to include the statement in each and every communication between the plan and the member (e.g., in every EOB, on the ID card), and we do not believe that this was the

Department's intent, especially in light of the cost implementation assessment HHS provided in the IFR. However, we share the Department's goal of ensuring that members are aware of the grandfathered status of their plan and what that means. We suggest that HHS clarify that that the disclosure must be made at least annually and must be included in a prominent position, in large font, on the legal documents (i.e., contract or member certificate) for group policies and in an annual communication with individual policyholders.

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WellPoint appreciates this opportunity to offer our suggestions to help ensure that consumers who like the health insurance coverage they have today are able to keep it. Should you have any questions or wish to discuss our comments further, please contact Jennifer Boyer at 202-628-7831 or [Jennifer.Boyer@WellPoint.com](mailto:Jennifer.Boyer@WellPoint.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'Elizabeth P. Hall', with a stylized flourish at the end.

Elizabeth P. Hall  
Vice President, Public Policy