



August 16, 2010

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

Office of Health Plan Standards and
Compliance Assistance
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Attention: RIN1210-AB42

Internal Revenue Service
P.O. Box 7604 Ben Franklin Station
Washington, DC 20044
Attention: REG-118412-10

Via: www.regulations.gov

Comments of Consumers Union of U.S., Inc., on
“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”
File Code OCIIO-9991-IFC/RIN 1210-AB42/REG-118412-10

Introduction

Consumers Union, the independent, nonprofit publisher of *Consumer Reports*,¹ is pleased to provide the following comments to the U.S. Department of Labor, Department of Health and Human Services and Internal Revenue Service (“the Departments”). Our comments address the Departments’ interim final rules for grandfathered health plans. Section 1251 of the Affordable Care Act, as modified by section 10103 of the Affordable Care Act, and Section 2301 of the Reconciliation Act, specifies that certain plans or

¹ Consumers Union is a nonprofit organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance. Consumers Union’s publications have approximately 8.3 million combined paid circulation and carry no advertising and receive no commercial support. Consumers Union’s income is solely derived from the sale of Consumer Reports and ConsumerReports.org, its other publications and from noncommercial contributions, grants and fees. In addition product testing, Consumer Reports and ConsumerReports.org regularly carry articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions that affect consumer welfare.

coverage existing as of the date of enactment (March 23, 2010) shall be termed grandfathered health plans and are exempt from certain provisions of the Act.

Consumers Union supports most aspects of the proposed rule. We have provided specific recommendations to strengthen the proposed rules in a separate comment letter signed by multiple consumer organizations. Those comments addressed the conditions under which changes in plan structure, a plan's provider network and a prescription drug formulary should result in cessation of grandfathered status; clarified what happens if a plan stops offering dependent coverage and other issues.

The purpose of these supplemental comments is to provide specific support for the treatment of cost-sharing in the proposed rule and expanded recommendations with respect to the proposed model notice.

Support for Rules Governing Loss of Grandfathered Status

Consumers Union supports the proposed rule with respect to the cost-sharing changes, elimination of benefits, and changes to employer contribution rates that would lead to a loss of grandfathering status.

The proposed rule protects consumers by setting reasonable limits on a health plan's ability to maintain grandfathered status. More importantly, these limits are well-defined – avoiding (or at least minimizing) interpretation problems later.

We believe these rules balance fairly the potential benefits of belonging to a grandfathered plan against the benefits enrollees would receive under non-grandfathered plans. For example, if a plan sponsor *improves* the benefits offered under a grandfathered plan, the interim rules allows the plan retain its grandfathered status.

Alternate Language For The Grandfathered Plans “Model Notice”

Under the proposed rules, grandfathered health plans are required to provide a disclosure notice to all participants and beneficiaries about the grandfathered status of the plan. This notice is to be included in any plan materials provided to a participant or beneficiary describing the benefits provided under the plan or health insurance coverage. The Department of Labor estimates that 56.3 million policy holders in private employer plans, 16.2 million policy holders in state and local governmental plans and 4.3 million policy holders in non-group plans will receive these notices.

The interim rules provide model language which would satisfy this notice requirement, although plans are not required to use it.

Reflecting the widespread impact of these notices, Consumers Union recommends that the proposed notice be reworked to make it more understandable and “actionable.” For example, the model language could be modified to read as follows:

This health plan is a “grandfathered health plan” under the 2010 Affordable Care Act. A grandfathered health plan is allowed to preserve certain features of health coverage that were already in effect when that law was enacted.

IMPORTANT: Being in a grandfathered health plan means that your coverage **MAY EXCLUDE** certain protections that apply to other plans, for example, the requirement that preventive health services be provided without any patient cost sharing. **Your health plan administrator will provide a complete list of the protections are not required and, hence, not included in this plan.** Any unanswered questions can also be directed to: [For ERISA plans, insert: the [Employee Benefits Security Administration, U.S. Department of Labor at 1-866-444-3272 or www.dol.gov/ebsa/healthreform](#). This website has a table summarizing which protections do and do not apply to grandfathered health plans.] [For individual market policies and nonfederal governmental plans, insert: The U.S. Department of Health and Human Services at [www.healthreform.gov](#).]

As indicated in the example, Consumers Union recommends that the grandfathering rules include a **new obligation** for the health plan administrator to spell out specifically which ACA consumer protections are not included in their grandfathered plan. This helps the consumer in two ways. One, it directly provides the piece of information that consumers need. Two, it provides the real “bottom line” for consumers. Many large employer plans may decide to include all the essential benefits or may provide first dollar coverage of preventive services. If consumers are to be helped by this notice, it must spell out the specific protections that are missing from their grandfathered plans, but should not list provisions that—even if not required of grandfathered plans—happen to be present in their plan anyway. Consumers should not have to wade through a generic notice with no easy way to tell if it applies to them or not.

Consumers Union also recommends adding formatting requirements to the proposed rule. Formatting of disclosures can have a powerful effect on their use by consumers.² For example, require 12-point type and an outline around the statement or other approach that highlights the importance of the information. The capitalization and bolding requirements (see example above) should also be added to the final rule, or at least incorporated into the model notice.

Thank you for the opportunity to comment on 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.

Respectfully submitted,

DeAnn Friedholm
Director, Health Reform
Consumers Union

² See, for example, Philip Keitel, *Consumer Testing Informs Policy: Overdraft Regulation as a Case Study*, Federal Reserve Bank of Philadelphia, June 2010.