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Human Resources Policy

August 16, 2010

Ms. Kathleen Sebelius, Secretary
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

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RE: 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

Secretary Sebelius:

On behalf of the National Association of Manufacturers (NAM), I appreciate the opportunity to submit the following comments on 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 in the Federal Register on June 17, 2010.

The NAM is the nation's largest industrial trade association, representing 11,000 small and large manufacturers in every industrial sector and in all 50 states. The NAM's mission is to enhance the competitiveness of the manufacturing economy by advocating policies that are conducive to U.S. economic growth. Our manufacturing economy, and our ability to create jobs, is significantly impacted by changes to the health care infrastructure. Over 97 percent of our members provide health insurance for their employees, and we are very concerned about what impact the grandfather rule will have on their ability to continue providing that coverage.

As currently drafted, we believe the grandfather rule is too restrictive and will result in a higher number of employer-based plans losing or foregoing their grandfathered exemption than even the high estimate of nearly 70 percent stated in the rule. Such a dramatic decline in coverage will create unnecessary disruptions for both employees and employers. It is unreasonable to expect employers to adhere to the parameters outlined in the rule in the long term and still provide coverage for their employees. Clearly, drafting the rule with such rigidity does not meet the goals intended for health reform – to expand coverage to the uninsured and protect the ability of every American to keep their plan if they so choose. In our estimation, if the Interim

Final Rule is not altered significantly to allow individuals to keep the coverage offered by their employer, the number of plans and employers losing their grandfathered status will exceed the HHS estimates and tens of millions of Americans will needlessly lose their employer-based health care coverage in the next three years.

Limits use of Cost Control Measures and Eliminates Flexibility in the Marketplace

Currently, roughly 170 million Americans receive health insurance from their employers. As the largest association representing manufacturers, we are specifically concerned about the strict parameters in the rule limiting the use of valuable and customary cost control measures to keep health insurance affordable.

Under the new law, health plans currently being offered to employees were to have grandfathered status, which exempted them from certain insurance market reforms applicable to new plans. This status was intended to allow employees to keep the coverage they currently have and with which they are most likely satisfied and comfortable. However, the Interim Final Rule limits the ability of these plans to make even modest changes that will assist them in controlling costs - which threatens the ability of most employers to continue providing health care coverage to their employees. Controlling costs is essential to manufacturers and implementation of the rule as written will force employers to choose between increased costs as they lose grandfathered status and comply with additional reforms or increased costs as they absorb more of the burden of skyrocketing medical inflation.

Many employers offer various options for health insurance to their employees so the employee can choose the plan that fits their individual economic need or circumstance. As the tendency is for health care costs to rise, employers should be able to tailor their plans accordingly to meet the changing needs of their workforce. Limits on modifications to health care plans and cost-sharing arrangements should be analyzed in the context of actuarial value rather than specific actions, such as changing issuers or adjusting co-insurance. Without appropriate flexibility, health plans currently offered by employers, either the fully-insured or self-insured, will be frozen in time and likely be placed on an accelerated path toward extinction and/or unsustainability.

To illustrate, the rule prohibits increases in deductibles and out-of-pocket limits above medical inflation plus 15 percent from March 23, 2010. Adjustments to co-payments are restricted in a similar manner with an additional option of \$5 plus medical inflation. Setting an actual date, to which the percentage change cumulatively aggregates, versus allowing year-to-year percentage adjustment effectively ensures employers will not be able to keep up with the cost of the plan. While the medical inflation rate may be a useful tool in looking at aggregate increases in medical spending, it has only a tangential relationship to the actual cost of any individual or group plan. The NAM believes HHS should re-examine this policy and alter it to medical inflation plus a percentage on a year-to-year basis rather than from the date of enactment.

The rule currently revokes grandfathered status from those who are fully insured if they change issuers. This policy eliminates the most effective tool most smaller businesses have to reduce costs – the ability to negotiate with multiple insurance carriers to obtain lower rates. Most smaller businesses do not have the populations to diffuse costs over a larger pool of beneficiaries and as a result they depend on competition and negotiation among insurance issuers within an open market to lower costs for their business and employees. The NAM believes those who are

fully insured should be able to negotiate with competing issuers and maintain grandfathered status if they decide to change issuers.

Requested Comments

Changes in Plan Structure: As a company grows it often makes different health care choices for its employees. For example, a fully-insured company may decide that it can manage the risk and the paperwork burden to become self-insured, or a self-insured company may decide it is more economical to be fully-insured. An employer should not be penalized for offering different and many times better options for their employees. Employers leveraging these arrangements improve patient outcomes, drive quality and reduce costs.

Changes in a network plan's provider network: The final rule needs to allow changes to provider networks on a regular basis without impacting the grandfathered status of plans. Modifications to plans can come in many forms that are beneficial to the insured population. For example, plans should not be penalized for adding "Centers of Excellence" to a network (e.g., transplant, bariatric, cardiac surgery, etc.). In addition, many changes to a plan's provider network can be "significant" for a population but insignificant to the nationwide plan.

There are many reasons plans need to alter their provider networks, such as expanding the network to provide greater access to services, contract arrangements between insurer and provider, or to address other provider changes. Further, employers currently offering fully-insured plans should not be penalized for changes made by the insurer to their plan. It would be fundamentally unfair to take away a business' access to a plan due to some action beyond the employer's control. Basic modifications to a plan to adjust for technology or doctors who may no longer be affiliated with a network should not disqualify a plan from being grandfathered.

Changes to a Prescription Drug Formulary: Formulary management is a key component of an employer's ability to control cost and quality. Changes and innovations in treatment standards and technology require formularies to be updated continually to align with appropriate disease management. A static formulary would not allow employees to access the safest and most effective therapies available to them. In addition, an insurer changing a formulary for a fully-insured employer should not result in the loss of an employer's grandfathered status. Formularies should be managed to provide the best quality of care and flexibility for employer options.

Other substantial changes to benefit design: It is difficult to determine what technologies or benefit vehicles will be available in the future. Employers should be allowed to provide as many options as possible for their employees so they may choose the best plan for their family. Limiting changes to benefit design creates a stagnant market devoid of competition and innovation. Increased competition will lower health care costs, and a flat market is not competitive.

Conclusion

The NAM appreciates the opportunity to submit these comments and hopes our concerns with the substance of these proposed changes are considered. Ninety-seven percent of NAM members provide health insurance to their employees. Manufacturers are proud to provide the best possible health care options to their employees and would like to continue providing that benefit. Flexibility within the context of actuarial values is the best approach and will increase competition in the marketplace. Freezing the market will create a stagnant, uncompetitive and

more expensive insurance market for those who want to continue providing coverage for their employees.

We caution against further efforts to limit employers' options and enact these insurance reform changes without consideration of more balanced approaches that include a strong employer role. If we can be of further assistance on this matter, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Trauger", is centered on a light green rectangular background.

Joe Trauger
Vice President, Human Resources Policy