



August 16, 2010

The Honorable Kathleen Sebelius  
Secretary, Department of Health  
and Human Services  
Attention: OCIIO-9991-IFC  
P.O. Box 8016  
Baltimore, Maryland 21244-1850

*Submitted via electronic mail*

RE: Comments to OCIIO-9991-IFC – Interim Final Rules re: Grandfathered Health Plans

Dear Secretary Sebelius,

Medco would like to provide commentary on a few areas of the rule regarding pharmacy benefits and from a large employer's perspective to explain why certain practices and changes to a plan are consistent with the intent of the rule and should not result in the loss of grandfathered status.

We appreciate the opportunity to provide comments regarding the Department's recently released interim final rule for "Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan under the Patient Protection and Affordable Care Act" (hereinafter referred to as the "Rule").<sup>1</sup> Thank you for your willingness to consider our views on this matter. Medco looks forward to working with the Department to help ensure the success of this and many other components of the recently enacted health care reform law.

As the nation's leading pharmacy benefits management company, Medco provides clinically driven pharmacy services designed to improve the quality of care and lower total health care costs for private and public employers, health plans, labor unions, government agencies of all sizes and for individuals served by Medicare Part D Prescription Drug Plans.

First, we note that we are in agreement with the August 16<sup>th</sup> comments submitted by the Pharmaceutical Care Management Association, of which Medco is a member, and appreciate your consideration of that comment letter. We would like to add some additional thoughts and address two issues that concern employers more broadly. Our comments, described in detail below, are as follows: **(1)** The use of appropriate therapy management programs such as a change in the delivery channel for appropriate medication and step therapy should not result in

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<sup>1</sup> 75 Fed. Reg. 34538, *et seq.* (June 17, 2010).

the loss of grandfathered status; and (2)(i) plans should not lose grandfathered status when fewer options are made available to employees during open enrollment and (ii) plans should not lose grandfathered status if an insured option is replaced with a self-insured option with the same plan design.

## **I. Therapy Management**

### **A. Change in the Delivery Channel**

The interim final rule is silent as to changes in pharmacy channel selection. Changes in channel selection are a very common part of managing a plan's pharmacy benefit. Using mail order or preferred pharmacies can reduce costs for both the payor and the patient.

Indeed, a central focus of the new health care reform law is the idea of bending the cost-curve of health care. Medco is a leading innovator of reducing the cost of health care. We do this in a number of ways, including through a protocol-driven, evidenced-based pharmacy practice that addresses the needs of patients with complex and chronic conditions. Our clients and their members benefit from the enhanced pharmacy care offered through our specialty pharmacies and our therapeutic resource centers. Encouraging the use of these pharmacy services has resulted in better outcomes and a reduction of total healthcare costs. Plans should have the ability to encourage or require, where appropriate, cost-effective and care enhanced channels of drug delivery for participants without concern for losing grandfathered status. Provided coverage for the condition has not been eliminated, the channel through which the coverage is accessed should not impact a plan's grandfathered status.

Medco believes that changes in pharmacy channel selection should not result in the loss of a plan's grandfathered status.

### **B. Use of Coverage Management Rules**

Coverage management rules are another way for plans to manage the costs of coverage while insuring that clinically appropriate therapies are available. For example, step therapy programs generally require the use of a first generation or preferred drug before a newer or non-preferred drug is covered. These programs encourage patients to use clinically effective and less costly drugs before trying more costly drugs. Provided clinically effective coverage for the condition continues under the plan, the use of coverage management programs should not impact a plan's grandfathered status.

## **II. Plan Option Related Issues**

### **A. Removal of One or More Plan Options**

Many plan sponsors periodically change health plan offerings for a number of reasons including cost, network access, and member satisfaction. In addition, options may be eliminated because they are no longer offered (such as where a health insurer stops offering an HMO in a geographic area).

In the ordinary course, plan options are eliminated or added during the annual open enrollment period when participants have the opportunity to choose from among the available options. We believe that the elimination of an option during the open enrollment period should be treated under section (b)(3) Example 1 (where the participants have a choice) and the remaining options can retain their grandfathered status. We do not believe that Example 2 should apply (where the participants are forced into a different option) and we request clarification of this point. Otherwise, employers who make no plan design changes could nonetheless lose grandfathered status for continuing options because, for example, an HMO is no longer offered in their geographic area. To be clear, however, we note that any new option added would not be grandfathered.

Medco believes that plans should not lose grandfathered status when fewer existing plan options are made available to employees provided the changes are made in connection with an open enrollment opportunity.

### **Change from Insured Plan to Self-Insured Plan**

Section (a)(ii) of the interim final rule requires that plans renew insurance policies in order to maintain grandfathered status. There are many reasons a plan may choose not to renew its insurance. For example, a plan sponsor may choose to replace an insured product with a self insured product offered by the same insurer. This type of change is typically made because it results in reduced costs for the plan sponsor, the plan and the plan participants.

We believe that the funding vehicle (insurance or self insured) should not be the focus of the analysis. Rather, the plan design should be analyzed under the rules regarding coverage for conditions and changes to the cost sharing arrangements contained in the interim final rules. If the change is viewed as a plan amendment and the change satisfies the rule, then the plan should not lose grandfathered status merely because it changed its funding vehicle.

Medco believes that self-insuring an offering with the same plan design as the previously offered through an insured product should not cause the cessation of grandfathered status.

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Again, we appreciate your willingness to consider our comments on the above mentioned interim final rule and look forward to working with the Department to promote the successful implementation of this new program.

Sincerely yours,



Colleen M. McIntosh  
Vice President-Assistant General Counsel  
Office of General Counsel