



## American Association of Tissue Banks

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August 5, 2010

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

**Re: OCIO-9991-IFC**  
***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***

Dear Madams and Sirs:

The American Association of Tissue Banks [hereinafter referred to as the "AATB" or the "Association"] submits these comments in response to the Department of Health and Human Services (HHS) publication of the above-captioned document. The notice of these Interim Final Rules appeared in the June 17, 2010 issue of the *Federal Register* [75 *Federal Register* 34537-34570].

The Association understands that these Interim Final Rules were effective on June 14, 2010. They are intended to implement the rules for grandfathering group health plans and health insurance coverage in the group and individual markets under the provisions of the Patient Protection and Affordable Care Act (Public Law 111-148) enacted on March 23, 2010.

### **THE INTEREST OF THE AATB**

The American Association of Tissue Banks (AATB) is a professional, non-profit, scientific and educational organization. It is the only national tissue banking organization in the United States, and its membership totals more than 110 accredited tissue banks and 1,000 individual members. These banks recover tissue from more than 30,000 donors and distribute in excess of two million allografts for more than one million tissue transplants performed annually in the U.S. The overwhelming majority of the human tissue distributed for these transplants comes from AATB-accredited tissue banks.



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The Association was founded in 1976 by a group of doctors and scientists who had started in 1949 our nation's first tissue bank, the United States Navy Tissue Bank. Recognizing the increasing use of human tissue for transplant, these individuals saw the need for a national organization to develop standards, promote ethics and increase donations.

Since its beginning, the AATB has been dedicated to improving and saving lives by promoting the safety, quality and availability of donated human tissue. To fulfill that mission, the AATB publishes standards and accredits tissue banks. It certifies personnel and operates a tissue network. The Association also interacts with regulatory agencies and conducts educational meetings.

Like the majority of our fellow non-profit, tax-exempt organizations, the AATB is a small association with less than 10 full-time employees. Like most small businesses, obtaining good, affordable health insurance coverage is an annual and costly challenge. This year, supplying health insurance for less than 10 employees is consuming about eight percent (8%) of our annual budget. The AATB and tens of thousands of associations and organizations nationwide, which represent hundreds of thousands of working Americans, do not have the economic clout of larger enterprises. We are dependent on a small number of health insurance providers. We are, therefore, extremely interested in the above-captioned Interim Final Rules.

### COMMENTS

As noted in the preamble, "These interim final regulations are designed to ease the transition of the healthcare industry into the reforms established by the Affordable Care Act by allowing for gradual implementation of reforms through a reasonable grandfathering rule."

However, these Interim Final Rules also provide that a group health plan or health insurance coverage no longer will be considered a grandfathered health plan if a plan sponsor or an issuer makes one or more of several different changes. These include:

- Eliminating all or substantially all benefits to diagnose or treat a particular condition;
- Increasing a percentage cost-sharing requirement (such as coinsurance) above the level at which it was on March 23, 2010;

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- Increasing fixed-amount cost-sharing requirements other than copayments by a total percentage measured from March 23, 2010 that is more than the sum of medical inflation and 15 percentage points;
- Increasing copayments by an amount that exceeds the greater of certain measured percentages;
- For a group health plan or group health insurance coverage, an employer or employee organization decreases its contribution rate by more than five percentage points below the contribution rate on March 23, 2010; or
- With respect to annual limits, a group health plan, or group or individual health insurance coverage imposes an overall annual limit on the dollar value of benefits; adopts a new, first-time overall annual limit at a dollar value that is lower than the dollar value of the lifetime limit on March 23, 2010; or decreases the dollar value of the annual limit regardless of whether the plan or health insurance coverage also imposes an overall lifetime limit on the dollar value of all benefits.

The vast majority of small associations, businesses and organizations purchase employee health insurance that is fully insured. They generally do not have the resources or the ability to self-insure as a means to control their health insurance costs and benefits. Most of these firms would benefit greatly from the expanded options for health insurance that will be available beginning in 2014 through the exchanges. The exchanges will allow small and medium-sized organizations to benefit from the economies of scale of pooling that are not currently available.

However, because the benefits of the exchanges will not be realized until 2014, most small associations, businesses and organizations will continue to experience annual cost increases and coverage problems until 2014. Consequently, for these firms, the grandfathering of their existing coverage is extremely important, especially prior to the establishment of working exchanges.

Like many other small firms, the AATB is greatly concerned that the provisions outlined in the Interim Final Rule are too restrictive and will cause many tax-exempt organizations to lose the grandfathering benefits that they need and expect. If forced to consider options of a non-grandfathered plan before they have the benefit of an exchange, we share the concerns that many associations, business and organizations

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may be priced out of the market. Some could even be forced to seriously curtail or to drop coverage. Given its rationale and intent, this would be an extremely tragic, bizarre and unintended byproduct of the Patient Protection and Affordable Care Act. We believe that HHS does not intend or want this to happen.

There are subsidies available for small employers to help offset the costs of providing insurance. However, these credits are very limited. They begin to phase out if an employer has over 10 employees, and they completely phase out if there are 25 or more employees. The credits are also phased out for employers with even modest-sized compensation packages. So while these subsidies do provide assistance for some small tax-exempt employers, their benefit is very limited.

As noted previously, many tax-exempt organizations are small in terms of finances and numbers of employees. Because they generally cannot self-insure, they are at the mercy of the health insurance plans sold by private carriers. These employers have little, if any, control over copayments and cost sharing. Consequently, simple changes to their health insurance plans can cause the plans to lose the grandfathered status.

Since exchanges will not be available until 2014, we anticipate that finding affordable health insurance, which meets the requirements of the new Patient Protection and Affordable Care Act, will be a major problem for firms like the AATB. For the next several years, small associations, businesses and organizations will need to adjust their health insurance plans to control costs and to provide affordable coverage. This will be necessitated by the current economic environment.

The AATB is very concerned that Interim Final Rules, as currently drafted, may force some firms to make the difficult and undesirable choice of canceling health care coverage if grandfather status is revoked, especially before the exchanges are in place. This is a very real concern, and in recent years significant modifications and cancellations have occurred due to rising health care costs.

The current health insurance marketplace is in a state of flux. The Patient Protection and Affordable Care Act is already initiating major changes, and our nation's present economic climate are further complicating our health insurance system. It is imperative, therefore, that the Interim Final Rules be as lenient, flexible and reasonable as possible, especially for small associations, businesses and organizations. The several different changes outlined above, under which a plan would no longer be considered a

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grandfathered health plan, do not meet these requirements. They will not "ease the transition," and they do not constitute "a reasonable grandfathering rule." They only exacerbate an already complicated and over-burdened situation.

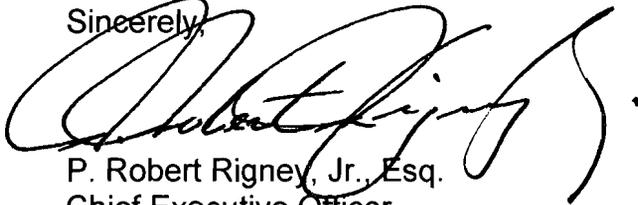
For the transition period before the exchanges can be established, the AATB would recommend that small and medium-sized employers be allowed to make cost-saving changes to copayments and cost sharing, provided they do not reduce the per-employee amount or percentage that they paid for insurance on March 23, 2010. This would help these organizations adjust and preserve coverage in anticipation of greater reform and options that will begin in 2014.

We also recommend that small and medium-sized employers be allowed to change insurance carriers prior to 2014 and have their plans treated as grandfathered plans provided that they do not reduce the per-employee amount or percentage that they paid for insurance on March 23, 2010. This would allow small associations, businesses and organizations to maintain the level of coverage for employees, and perhaps reap the benefit of a less expensive plan prior to the implementation of the exchanges.

I thank you in advance for your time and consideration of our comments. This is an extremely important issue for the AATB and similar-sized organizations. If you have any questions, or if there is any additional information that we can provide, I hope you will contact us.

With best wishes.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "P. Robert Rigney, Jr." with a flourish at the end.

P. Robert Rigney, Jr., Esq.  
Chief Executive Officer

PRRJr/br