**From:** McGowan, John
**To:** EBSA, E-OHPSCA - EBSA
**Subject:** Initial Comment(s) to Interim Final Rules, Pertaining to Coverage of Dependent Children Under Age 26
**Date:** Monday, May 10, 2010 5:02:37 PM

Dear Proposed Rulemakers:

I appreciate the efforts the Departments have been making to issue rules, regulations and other guidance regarding the Patient Protection and Affordable Care Act (PPACA), and to coordinate their efforts (as between the US Treasury Department (TD) and the Internal Revenue Service (IRS), the Department of Health and Human Services (HHS), and the US Department of Labor (DOL)). There is an incredible need and desire for timely guidance, and great pressure has been placed on all the affected departments and agencies.

In looking over the captioned, Interim Final Rule pertaining to the coverage of dependent children who have not yet attained age 26, which was released just a short while ago, there seems to be a snag which pertains to "grandfathered" health insurance coverage that has been collectively-bargained. I suspect it may simply have been overlooked; as such, I urge the Departments to recognize the oversight and modify the grandfather provisions accordingly, to conform the Interim Final Rule to the four corners of the statute.

The Bargaining Agreement "Grandfather"

I observe that in the Interim Final Rule, no distinction whatsoever has been made between

1) group health plans that are "grandfathered" under PPACA Section 1251(a) (as modified by PPACA Section 10103(d)) and further modified by Section 2301(a) of the Reconciliation Act, to add subsections (a)(3) and (a)(4) thereof); and

2) coverage(s) being provided under one or more collective bargaining agreements which is independently "grandfathered" under PPACA Section 1251(d) -- which sailed through both the managers' conference and the reconciliation process without any modification.

The Interim Final Rule simply makes passing reference to PPACA "Section 1251" as if there was only one grandfather rule present there. There are, in fact, at least 2 separate rules -- and the one for collective bargaining agreements makes no provision for immediately incorporating the changes the PPACA made to Public Health Service Act Sections 2708, 2711, 2712, 2714 and 2715, and 2718.

Congressional Respect For The Bargaining Parties' Division of Costs

The grandfather rule for health insurance coverage maintained pursuant to one or more collective bargaining agreements (PPACA Section 1251(d)) clearly and unequivocally recognizes that management and labor need to meet and agree among themselves how best to shoulder the costs of providing employee (and

dependent) coverage. In the absence of such bargaining, business models break down because a business's labor costs cannot be reliably ascertained. I further submit that by changing the "plan" grandfather twice (PPACA Section 1251(a)) while leaving the bargaining agreement grandfather untouched (PPACA Section 1251(d)), Congress made clear that it intended to respect this process, and chose to not get involved in it -- leaving it instead to the bargaining parties to work out.

Indeed, many collective bargaining agreements are the end-product of a refined and exhaustive bargaining process, where management and labor take an overall economic package and then divide the economic burdens imposed by that package (including the costs of providing benefits) between them. Section 1251(d) clearly recognizes that, for example, removing lifetime limits on benefits and extending coverage for dependent children who have not yet attained age 26 (particularly, if adverse selection begins to play a role) adds additional cost -- and it refrains from requiring management to absorb those costs, possibly for years, without first reaching agreement with the union(s) over what effect(s) those costs will have on the compensation package. The same Congressional restraint holds for single-employer and multiemployer "Taft-Hartley" health and welfare plans (including collectively-bargained VEBAs): in each instance, the governing bodies are permitted time to figure out how to deal with the additional costs being imposed by such sections -- and who should bear them. It is difficult to imagine that a Health Care Reform initiative, which is being touted as helping American business become more competitive on the world stage, would simply ignore such a fundamental principle as the need to have dependable labor costs.

In sum, by overlooking this important statutory distinction, the Final Interim Rule goes where Congress clearly did not want it to go. Accordingly, I strongly suggest that the Rule be revised to recognize, and incorporate, the Section 1251(d) grandfather for collectively-bargaining health insurance coverage.

Respectfully,

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