



August 16, 2010

Office of Health Plan Standards and Compliance Assistance  
Employee Benefits Security Administration  
Room N-5653  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210  
Attention: RIN 1210-AB42

Re: Interim Final Rules for Grandfathered Health Plans Under the Patient Protection and Affordable Care Act

Position: In the Patient Protection and Affordable Care Act implementation process, allow plan sponsors flexibility to appropriately design and modify health care benefits to ensure the ability to continue to deliver high-value health care to employees and their dependents.

Dear Sir or Madam:

The National Business Coalition on Health (NBCH) appreciates the opportunity to comment 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 (PPACA), which were issued by the Departments of Labor, Health and Human Services, and Treasury on June 17, 2010 (75 Fed. Reg. 34538). It is our understanding that these comments will be shared with the Departments of Treasury and Health and Human Services, and we appreciate the time and consideration given to our following comments.

In terms of background, NBCH is comprised of a national network of state and local health coalitions, which represent 7,000 public and private employers, namely self-insured employers, who voluntarily provide health insurance to 25 million Americans. The cornerstone of our health care policy platform is to ensure our nation has a sustainable, accessible, and affordable high quality health care delivery system. We firmly believe that the more knowledgeable and accountable providers and consumers, the more stable and predictable our health care system will be.

NBCH and our member employer coalitions have a long history of value-based purchasing of health care and working as an organization, namely through the eValue8 health plan performance evaluation instrument, to encourage member coalitions, employers and providers to collaborate at the local, regional, and national level to improvement in the quality, safety, and efficiency of

health care. A transparent health care system in which the price and outcomes of standardized measures is available to the public is essential to our national, as well as our local coalition efforts to improve the quality and value of health care. It is vitally important that our member coalitions, their employer members and the plans that they work with have the flexibility to appropriately design and modify health care benefits to ensure the ability to continue to deliver high-value health care to employees and their dependents.

In terms of NBCH's concerns, PPACA specifies that group health plans or insurance coverage existing on the date of enactment (March 23, 2010) are not required to comply with certain plan requirements under PPACA. These include the requirement for coverage of preventive care at no cost to the participant or insured. However, PPACA does not address at what point changes to such group health plan or health insurance coverage are significant enough to cause the plan or health insurance coverage to cease to be a grandfathered plan, leaving that question to regulatory guidance which currently seems to be ambiguous. In general, the pending rules provide that grandfather plans will lose their status if "they choose to make significant changes that reduce benefits or increase costs to consumers." These include rules with respect to changing benefits, employee cost sharing and employer contributions but the specific conditions are unclear.

Please know that NBCH supports the Obama Administration's goal that Americans should be able to keep the coverage they have. However, the pending rules regarding grandfathered health plan status are likely to have just the opposite effect. By imposing strict and complicated limitations on what employers can do to manage the design of their benefit plans, many employers are likely to elect foregoing grandfather status altogether.

As an example, NBCH believes that a grandfathered plan should be permitted to make changes to provider networks and/or prescription drug formularies without losing grandfathered status since these modifications are essential to plan efforts to deliver reliable and efficient health care to participants. We suggest guidance clarifying whether a plan may make these changes without jeopardizing grandfathered status. Obviously an important contingency is that such changes do not result in the elimination of all, or substantially all, services needed to treat a covered benefit under the plan.

We also suggest clarification on whether a plan can change from an insured plan to a self-insured plan, without negatively affecting its grandfathered status. NBCH believes that it is imperative that a plan should not lose grandfathered status merely by changing the model by which it is financed, particularly since plan financing is largely unrelated to a beneficiary's plan experience.

PPACA also includes several provisions regarding employee wellness programs. We also suggest additional guidance regarding whether a plan may take advantage of these wellness plan provisions without jeopardizing grandfathered plan status, as well as provisions intended to encourage plans to adopt wellness programs, and provisions designed to allow for increased participant rewards and incentives.

Given the importance of grandfathered status to many of our coalition members and their employer members, the absence of any statement in the PPACA rules regarding plans' voluntary compliance with PPACA provisions, including changes to plan provider networks, prescription

drug formularies and wellness provisions, our coalitions and their employers are hesitant to make certain changes to their plans until there is additional guidance and compliance information, particularly relative to the issues listed above. .

Thank you for your consideration of these comments. If you have any questions, please do not hesitate to contact me at [awebber@nbch.org](mailto:awebber@nbch.org), or 202.775.9300.

Sincerely,

A handwritten signature in black ink that reads "Andrew Webber". The signature is written in a cursive, flowing style.

Andrew Webber  
President and CEO