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August 16, 2010

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

Submitted electronically at Regulations.gov

**Subject: Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act (75 Fed. Reg. 34538 (June 17, 2010).)**

Dear Secretary Sebelius,

The American Optometric Association (AOA) submits these timely comments in response to the Department of Health and Human Services (HHS) interim final rule to implement provisions set forth in the Patient Protection and Affordable Care Act (Affordable Care Act) regarding “grandfathered” health plans.

The AOA represents approximately 36,000 doctors of optometry, optometry students and paraoptometric assistants and technicians. Optometrists serve patients in nearly 6,500 communities across the country, and in 3,500 of those communities are the only eye doctors. Doctors of optometry provide more than two-thirds of all primary eye and vision health care in the United States. Without optometrists, the eye care needs of the American public cannot be met. Therefore, HHS should not only preserve and protect access to optometrists in group health plans and health insurance coverage, but should also take this unprecedented opportunity to provide and promote access to optometrists for those Americans whose eye and vision care needs are not yet addressed.

The Affordable Care Act, walking a thin line between President Obama’s promise that “If you like your health care, you can keep it,” and the need to improve health care delivery for everyone else, establishes important requirements for new health plans and existing health plans. The existing plans are called “grandfathered” plans. The interim final rule published in the Federal Register on June 17 establishes what circumstances will cause an existing plan to lose its grandfathered status and be subject to additional new (and higher) standards. The AOA believes important new patient protections are included in the Affordable Care Act and that it is in the interest of all patients to have these rights. Therefore, final regulations should be more restrictive than the interim final rule to prevent existing plans from eluding the improvements in health care delivery included in the Affordable Care Act by merely maintaining the status quo as a grandfathered plan.

The AOA proposes an additional event that should cause a grandfathered health plan to lose its protected status. Section 2706 of the Affordable Care Act creates an important patient protection by prohibiting

plans from discriminating against participation or coverage against health care professionals acting within their applicable state scopes of practice. The AOA has seen such discrimination have a negative effect on patient care in the past, and is concerned that grandfathered health plans will attempt to use their protected status as a temporary opportunity to expand discriminatory practices even though they do not improve health care delivery, quality, or efficiency. Grandfathered plans should be required to maintain or expand their networks of providers rather than narrow their networks based on arbitrary discriminatory or other anti-patient and anti-provider policies. This would ensure that patients in group health plans and health insurance coverage would, at a minimum, not lose appropriate access to health professionals in their plans. This would allow patients to keep their plans as they know them or have them improved by provisions in the Affordable Care Act. Thus, HHS should prohibit grandfathered health plans from making their networks of participating professionals more restrictive or more discriminatory merely on the basis of the degree of the professional without losing their grandfathered status.

The AOA also proposes a modification of one of the delineated events that cause a grandfathered health plan to lose its protected status. The interim final regulations stipulate that an elimination of benefits would cause a grandfathered health plan to become subject to additional provisions in the Affordable Care Act. Since some plans offer benefits through a supplemental plan or rider, the final regulations should make clear that non-renewal or discontinuance of the supplemental plan or rider would be considered an elimination of benefits. This additional stipulation would prevent grandfathered health plans from eluding the intent of the interim final regulations by tinkering outside a core policy.

The AOA strongly recommends HHS not loosen other provisions in the interim final regulations that would allow more grandfathered plans to slip through the reforms granted by the Affordable Care Act. The AOA also agrees with HHS that modifications by grandfathered plans to abide by the additional requirements of the Affordable Care Act should be encouraged and not necessarily cause a plan to lose its protected status. A grandfathered plan should be required to list the consumer protections that it does not follow so patients will better understand the rights they are not receiving as a result of being in a grandfathered plan. It's important that patients realize that the Affordable Care Act introduces many benefits that patients might not realize they are missing. Congress and the President supported the law to improve health care in the United States. HHS should be careful not to allow existing plans to retain antiquated, out-of-date policies from the past, particularly discrimination that artificially boosted their bottom lines at the expense of their beneficiaries.

On behalf of our membership and the tens of millions of Americans that our members serve, we thank HHS for considering these comments and using the feedback to help improve the interim final regulations on grandfathered group health plans and health insurance. Please contact Rodney Peele, Esq., Assistant Director for Regulatory Policy and Outreach at [rpeele@aoa.org](mailto:rpeele@aoa.org) or (703) 837-1348 if you have questions or need additional information about these comments.

Sincerely,



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