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August 27, 2010

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

The Honorable Hilda Solis
Secretary
U.S. Department of Labor
200 Constitution Ave., N.W.
Washington, D.C. 20210

The Honorable Timothy Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretaries Sebelius, Solis, and Geithner:

Employee Benefit Solutions ("EBS") is pleased to comment on the Interim Final Rule (IFR) published on June 28, 2010, in the *Federal Register* pertaining to rescissions in the group health plan environment under the Patient Protection and Affordable Care Act .

EBS is finding it difficult to reconcile the standards outlined in the IFR regarding rescissions for individual participants in a group health plan with actual administrative practices and timelines. There are events that, due to timing of general processing, require the retroactive termination of benefits:

- **Employee loss of eligibility:** Many employers and administrators rely on electronic file transfer to communicate employee status changes that affect benefit eligibility. Most files are transferred on a weekly basis creating an automatic one to three week lag time as the data moves from the work location to the centralized human resources and/or payroll group to the benefits administrator to the health benefits carrier. We are fearful that this routine process may be hindered by the lack of definition around "timely" as related to administrative processes.
- **Spouse loss of eligibility:** Many qualified life events that affect eligibility are self-reported by the participant. Divorce is a common example and is often reported late to the employer and/or administrator. This will result in retroactive termination of benefits for the ex-

spouse who is not longer in an eligible participant. It is not clear in the IFR if a rescission is prohibited in this case, but it is noteworthy that this is not an administrative error of the employer or carrier. It is also not clear if the withholding of this information would be considered "fraud" on the part of the participant.

- Other dependent loss of eligibility: It is a common practice for employers to conduct a periodic "dependent audit" reviewing the eligibility of participant's dependents. This process includes reviewing birth certificates, marriage documents, etc. to confirm that employees have covered only dependents that meet the criteria of the plan. It is not clear in the IFR if any misrepresentation of dependent eligibility revealed by the audit is considered fraud or would be prohibited from retroactive termination. Again, it is important to note that this is not administration error on the part of the employer or administrator.

EBS feels that much more clarification is needed to administer this portion of the IFR. Additional clarification on the definition of "timely" and what is considered fraudulent would allow group health plan sponsors to administrate and communicate more clearly to participants.

Sincerely,

Employee Benefit Solutions