National Association of Health Underwriters

America's Benefits Specialists

September 28, 2010

The Honorable Michael B. Enzi
Ranking Member
Committee on Health, Education, Labor and Pensions
United States Senate
835 Hart Office Building
Washington, D.C. 20510

Dear Senator Enzi:

On behalf of the National Association of Health Underwriters (NAHU), which represents more than 100,000 health insurance agents, brokers and employee benefit specialists involved on a daily basis in the sale and service of private health plans, I am writing to convey our support for your resolution of disapproval (S.J. Res. 39) to overturn the so-called grandfather rule in the Patient Protection and Affordable Care Act (PPACA).

As you know, throughout the legislative debate on health system reform, President Obama and congressional leaders repeatedly stated that "if you like the coverage you have, you can keep it." Unfortunately, the proposed interim final rule (IFR) on grandfathering issued this past June follows a rigid path in defining the requirements for "keeping what you have," which our professional benefit specialist members conclude will have a negative impact on employers large and small, their employees and their families. The complex and inflexible requirements could ultimately undermine the ability of employers to continue to provide existing health coverage for their employees.

The current grandfather IFR has not provided adequate guidance on various scenarios employers and consumers may encounter and, as such, there are many questions about the allowable changes that may be made to employer plans and the risk of losing grandfathered status. Once grandfathered status is lost, employers will be forced to follow a number of expensive new insurance rules, which will increase costs for employers and employees, threatening the coverage Americans currently have.

The Departments of Treasury, Labor and Health and Human Services own estimates indicate that the complex and restrictive IFR regime would effectively make grandfathering temporary: More than half of all employers, and two-thirds of all small employers, will relinquish their grandfathered health plans by the end of 2013.

Barring employers from changing insurance carriers or increasing cost sharing percentages of any level, for example, severely limits the ability of employers to maintain their grandfathered status. Other requirements to maintain grandfathered status, such as limits on the increases for fixed-amount cost sharing, are simply out of touch with the individual and small-group insurance markets since most employers have little control over the plan designs offered in the small-group and individual market.

In addition, the current grandfather rules do not afford protections for individuals and employers who lose their grandfathered status through no fault of their own. For example, if an individual or employer's health insurance carrier pulls out of a state marketplace, the only option the consumer has is to buy a new non-grandfathered policy or cease to be covered altogether. Unfortunately, our members report that a number of carriers are vacating many health insurance markets as a result of PPACA provisions, particularly in the individual and limited benefit plan markets, and that millions of their clients will be affected.

Our members also report that many large health insurance carriers are reorganizing all of their policy offerings as a means of streamlining administrative expenses. So while an individual or employer may be offered identical benefits through the carrier, their contractual dates may shift and they may technically be sold a new policy offering. Such administrative simplification moves may inadvertently cause millions to relinquish their grandfathered status.

We are very concerned that a great number of individuals and employers will be left with even less choice and flexibility and will be faced with the difficult choice of paying more to maintain grandfathered coverage, shopping for a new (and more expensive) plan or possibly dropping it entirely.

A workable and sustainable grandfathering protection framework should be aimed at achieving a number of important health reform objectives: (1) to promote stability during the transition to full health care reform by ensuring that Americans have a choice of keeping their current coverages; (2) to allow individuals to better control their health care costs; (3) to preserve affordable coverage options and limit disruption of coverage for currently insured individuals; and (4) to lessen the potential for regulatory uncertainty.

Unfortunately, the current grandfather rules fall short of these objectives on a number of levels. As such, we very much support your resolution of disapproval of the current grandfather rules, and hope that Congress and the Administration can work together toward a more sensible and sustainable policy moving forward.

Sincerely,

Janet Trautwein

Janet Trautwein
Executive Vice President and CEO