National Association of Insurance and Financial Advisors

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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,

The National Association of Insurance and Financial Advisors (NAIFA) supports your efforts to have federal regulators revisit the interim final rules (IFR) for grandfathered plans in order to provide individuals, families, and employers with additional flexibility to preserve their grandfathered plans as affordable coverage options.

NAIFA comprises more than 700 state and local associations representing the interests of 200,000 members and their associates nationwide. NAIFA's members are bound by NAIFA's Code of Ethics and are full time professionals in insurance and related financial services. Founded in 1890 as The National Association of Life Underwriters, NAIFA is the nation's oldest and largest insurance and financial services membership association. The vision of NAIFA is to protect and promote the critical role of insurance and insurance products in a sound financial plan and the essential role provided by professional agents and advisors. NAIFA's mission is to advocate for a positive legislative and regulatory environment, enhance our members' business and professional skills, and promote the ethical conduct of our members who assist the public in achieving financial security and independence.

Our members guide a diverse universe of consumers – including Fortune 500 companies, main street businesses, and individual consumers – through the complexities of health insurance purchasing and enrollment and help ensure buyers get the best policy at the most affordable price. These trained and licensed professionals help clients balance their desire for high-quality and comprehensive coverage with the reality of rapidly escalating medical treatment costs, and promoting access to affordable health insurance coverage is a primary objective for them. Perhaps most importantly, the work of our members continues throughout the life of each policy sold and typically includes providing guidance and assistance with claims issues, service questions, and quality enhancement and compliance matters.

Many of our members and their clients are concerned that the interim final rules for group health plans relating to status as a Grandfathered Health Plan issued on June 14, 2010 will result in the loss of current coverage.

The interim final rules (IFR) notes the statute balances its objective of preserving the ability to maintain existing coverage with the goals of expanding access to and improving the quality of health coverage. The statute allows regulatory guidance to determine the points at which changes to grandfathered coverage are significant enough to cause the plan or coverage to cease being a grandfathered health plan. In order to achieve the statutory goal of preserving the ability to maintain existing coverage, we encourage the Departments to reconsider the current guidance regarding permissible cost-sharing changes and offer clarifications on particular areas to provide consumers with additional flexibility to preserve their grandfathered plans as affordable coverage options.

Disclosure of Grandfather Status - The IFR provides that a group health plan or issuer must include a statement if a plan or coverage is believed to be a grandfathered plan, in any plan materials provided to a participant or beneficiary. A literal reading would require the disclosure in each and every communication that is sent to participants, including explanation of benefit statements and routine employer communications to participants. NAIFA believes the rule should clarify that a group health plan or issuer's disclosure obligation is fulfilled by inclusion of the model language in the summary plan description distributed to participants annually.

Carrier Selection - Currently, grandfathered status is lost if a group changes insurance companies even if the benefits are identical. In order to foster greater competition and bend the cost curve downward, plans should be allowed to maintain their grandfathered status if there is not a reduction in benefits. Plans should be able to shop insurance companies to match benefit level with a reduction in cost, thereby reducing their premium costs. This type of competition should be encouraged by allowing for a change in insurance companies if the underlying benefits are not changed.

Likewise, the Departments should permit changes in stop-loss carriers without relinquishing grandfather status provided permissible benefit terms in the IFR are maintained. Changes in third-party administrators (TPAs) and stop-loss carriers do not result in a change in benefits to participants. The IFR allows self-funded plans to change TPAs and preserve grandfathered status. Final rules should clarify that changes in stop-loss carriers will not result in the loss of grandfathered status.

Administrative Changes - Administrative changes made to a plan that do not otherwise impact the underlying benefits should not result in the loss of grandfathered status of the coverage. The Departments should allow changes to the:

- Contractual structure of the plan - movement from a medical policy with a dental rider to a medical policy with a separate dental policy
- Selection and utilization of third-party vendors including wellness, behavioral health organizations, pharmacy benefit managers, and rental network vendors
- Financing arrangement for coverage - movement from self-funded to fully-insured coverage and vice versa
- Eligibility criteria terms – addition of a tier structure including "employee" to "employee +1", "employee +2", etc.

Voluntary Buy Down – In order to contain costs, individual policyholders will voluntarily request increased deductibles, copayments and/or out-of-pocket maximums. Voluntary buy downs in the individual market should not result in a loss of grandfathered status. If a voluntary reduction in benefits results in the loss of grandfathered status, individuals will have the option of purchasing a likely higher cost new ACA policy or drop coverage. These individuals will not be eligible for the Pre-Existing Condition Insurance Plans for at least six months following their loss of coverage and will not be eligible for federal subsidies available through the Exchanges until 2014.

Cost-Sharing – According to IFR estimates, the permissible cost-sharing changes to grandfathered plans will result in more than half of all employers, and two-thirds of all small employers relinquishing their grandfathered coverage by the end of 2013. NAIFA encourages the Departments to reconsider the benchmark and accompanying standards for permissible cost-sharing changes to allow consumers to preserve their existing grandfathered plan as an affordable option. The Departments should provide that changes to cost-sharing with respect to non-essential benefits will not trigger a loss of grandfathered status.

Provider Networks and Pharmacy Formularies – Plan modifications are common to ensure prescription drug safety and access to health care providers at affordable rates for consumers. New drugs and lower-cost generics are continuously introduced and should be accessible to consumers by allowing changes to pharmacy formularies. Changes are made to networks for a number of reasons including the addition of new providers, changes in existing practices and to ensure all geographic regions remain covered. Plan modifications to provider networks and pharmacy formularies designed to improve quality and reduce costs should not cause the loss of grandfathered status.

NAIFA members remain prepared to assist you and the regulators on this important effort.

Sincerely,

Diane Boyle
Vice President
Federal Government Relations