



August 27, 2010

Office of Consumer Information and Insurance Oversight  
Department of Health and Human Services  
Attention: OCIO-9994-IFC  
P.O. Box 8016  
Baltimore, MD 21244-1850

**Submitted Electronically**

Re: **OCIO-9994-IFC**, Interim Final Rules for Group and Individual Health Plans re Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections

Dear Sir or Madam:

The National Retail Federation (NRF) represents the greater retail industry, employers of one of every five employees in the American economy. As the world's largest retail trade association and the voice of retail worldwide, NRF's global membership includes retailers of all sizes, formats and channels of distribution as well as chain restaurants and industry partners from the U.S. and more than 45 countries abroad. In the U.S., NRF represents the breadth and diversity of an industry with more than 1.6 million American companies that employ nearly 25 million workers.

Our members are strong supporters of employer-based health coverage and thus are vitally interested in the course of reform implementation and its effect on the cost of medical care and coverage. In our view, these interim final regulations addressing market conduct under the heading of patient protections have generally struck an appropriate balance between affected interests. Our comments below seek to clarify or improve upon the existing regulatory framework in the interim final rules in several respects.

NRF also has joined in a separate coalition comment letter (August 26, 2010) with the American Benefits Council, the National Association of Manufacturers and the U.S. Chamber of Commerce. We recognize and appreciate that NRF's comments today will be shared through the electronic portal with the Department of Health and Human Services, the Department of Labor and the Internal Revenue Service of the Department of Treasury.

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## **Annual Limits and Limited Benefit Plans**

The Patient Protection and Affordable Care Act (PPACA) and this interim final regulation address both lifetime and annual benefit limits. Lifetime limits are outlawed for plan years beginning after September 2010. Annual limits are phased out between plan years beginning after September 2010 and 2014.

NRF was among several groups that raised concerns about the effect of the phased restrictions on annual benefit limits on existing health coverage, especially limited benefit plans (also sometimes known as “mini-med” plans). Such plans are sometimes seen in the retail and restaurant communities, frequently for part-time employees.

We argued that application of the annual limit restrictions on these plans would remove an important source of health coverage for millions of Americans without recourse to affordable alternatives in advance of 2014. Our allied concerns were clearly heard by the Obama Administration, as evidenced by the introduction in the interim final rule of a prospective waiver of the annual limit restrictions before 2014. We commend the Administration for taking a flexible approach to this problem. The priority must be on ensuring continuity of existing coverage through a quick and fair waiver process. No one will be helped by the loss of their existing coverage.

NRF is confident that the Administration will continue to seek to accelerate sub-regulatory guidance on the waiver process – particularly in advance of the pending work toward company open seasons for 2011 benefits. Timing is critical to meet this goal. We also urge the Secretary to further exercise her discretion by simultaneously waiving application of medical loss ratio standards to coverage receiving a waiver from application of annual limit restrictions. This is also vitally important to preserve this coverage in the interim period before 2014. Finally, we encourage the Administration to extend the waiver or waivers continuously through plan years beginning in 2014 (assuming no substantial changes to the coverage considered under the waiver or waivers) to help ensure the greatest possible continuity of coverage in advance of the landmark changes and premium assistance available beginning in 2014.

## **Access to Emergency Services**

We concur with the objective of improving access to emergency services but urge the Administration to take care to ensure that this does not undercut network participation or otherwise substantially increase costs for plan participants. As suggested in our joint employer letter of August 26, 2010, one way to address network incentives might be to allow a cap on out-of-network reimbursement. In addition, we strongly urge you to protect patients by prohibiting balance billing by out-of-network emergency room providers. An out-of-network emergency room door is not really open

if a patient will face the prospect of balance bill charges. The capped out-of-network reimbursement really ought to be sufficient for out-of-network emergency room providers.

### **Pre-existing Condition Exclusions for Children**

PPACA and this interim final regulation prohibit preexisting condition exclusions for children age 19 and younger for plan years beginning after September 2010. All preexisting condition exclusions are prohibited after 2014. We strongly encourage you to follow the Administration's July clarification regarding structured enrollment periods.

PPACA seeks to ensure universal coverage by requiring all individuals to obtain coverage effective in 2014. It is important in the interim between now and 2014 not only to expand coverage for children but also to ensure that coverage is obtained and maintained prior to illness. The old insurance adages that a burning building cannot be freshly insured or that new flood coverage cannot be obtained for a flood-stricken residence hold true here regarding health coverage as well. Structured enrollment is an important accommodation in advance of the individual mandate to obtain coverage in 2014.

### **Conclusion**

Thank you for allowing NRF to comment on the IFR concerning: annual benefit limit restrictions and limited benefit plans; access to emergency services; and the prohibition on preexisting condition exclusions for children. We look forward to continuing to work with you in the months and years ahead as PPACA phases in.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Neil Trautwein", with a stylized flourish at the end.

E. Neil Trautwein  
Vice President  
Employee Benefits Policy Counsel