

August 26, 2010

The Honorable Kathleen Sebelius
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Sebelius:

On behalf of our nation's employers, we are writing to share our recommendations on issues raised by the interim final regulations relating to the implementation of the "Patient Protection and Affordable Care Act" (PPACA).

We strongly support the implementation of health reform in a way that is both workable and also meets the health care needs of working families. As representatives of stakeholders that provide health coverage to 120 million Americans, we have a major stake in promoting a high quality, affordable health care system. The economic health of our nation—and the ability of employers to create new jobs and advance a strong economic recovery—is directly related to the decisions the Administration is making on the implementation of key legislative provisions of PPACA.

To avoid disruptions in coverage and to prevent sharp increases in health care costs, we urge you to consider our recommendations on the following key issues:

- Grandfathered Health Plans: As promised repeatedly by the Administration and articulated in the PPACA itself, the grandfathered health plan provisions must preserve the ability of individual consumers and employers to maintain their existing health insurance coverage. This can be accomplished in several ways. As stated in the statute, the promise that "nothing shall be construed to require an individual [to] terminate coverage... in which such individual was enrolled on [March 23, 2010]" can be achieved by: (1) ensuring that the benchmark for permissible cost-sharing changes is closely aligned with rising medical costs; (2) allowing prescription drug formularies to be modified, without impacting the grandfathered status of plans, to account for advances in medical knowledge and research; and (3) allowing routine administrative changes to provider networks on a regular basis, without affecting the grandfathered status of plans, to expand the network, improve quality, and address other provider changes. More broadly, as the regulations themselves state, the grandfathering rules must provide significant flexibility to employers to continue existing coverage options that are working well for their workforces.

While we agree with the Administration's objective of stability, the approach taken by the statute and at least the broad goals of the regulations, the details of implementation and interpretation threaten to frustrate the overall goal of greater stability. As the regulation itself notes, a majority of grandfathered plans will no longer enjoy that status after three years.

- Restrictions on Annual Benefit Limits and Limited Benefit Plans: We appreciate that the interim final regulations have created an opportunity for limited benefit plans (sometimes also known as “mini-med” plans) to seek a waiver from the phased-in restrictions on annual benefit limits. We encourage you to allow this waiver to endure until 2014 (when annual benefit limits are entirely prohibited), provided that no major change is made to the plan receiving that waiver in the interim period.
- Pre-existing Condition Exclusions for Children: We appreciate that PPACA provides special protections for children under age 19 with pre-existing conditions. To ensure that this important reform provision is implemented in a way that advances the general goals of reform, we support the clarification issued by the Administration regarding structured enrollment periods. Prior to this clarification, issued at the end of July, the regulations appeared to create a perverse incentive for some families, especially those who are young and healthy, to wait until they experience medical problems to purchase coverage. This outcome would have increased premiums for other families purchasing coverage. While we applaud the recent clarification issued to address this concern, we request that this additional requirement be included in the final regulations, when they are issued. A structured enrollment process is critical to encourage people to buy coverage during a specific enrollment period and not wait until they are sick.
- Access to Emergency Services: It is important to ensure that the PPACA consumer protection provisions do not create unintended consequences or higher costs for health plan enrollees. If payment rates to non-participating emergency room providers are consistently higher than payment rates for providers in a health plan network, this creates an incentive for emergency room providers to stop contracting with health plans and decline to participate in provider networks. This will increase costs for consumers and employers. Instead, capping the out of network reimbursements paid to emergency providers might be one means of addressing this. Additionally, we strongly believe that patients should be protected from balance billing by out-of-network emergency room providers. Patients should not be subject to exorbitant costs or billing disputes if they are forced to seek emergency room care from out-of-network providers while traveling or in other circumstances.
- Medical Loss Ratios: The medical loss ratio (MLR) requirements should be structured to encourage investments in quality improvement initiatives that promote the delivery of high quality care based on the latest available evidence. To accomplish this goal, regulators should define “activities that improve health care quality” using the framework and criteria established by the Institute of Medicine and the Agency for Healthcare Research and Quality. It is the primary goal of these entities to promote high quality health care for consumers. Additionally, a transition plan is needed to ensure that existing coverage options are not disrupted as we move from the existing state MLR requirements to the new federal MLR standards.

As HHS develops the final regulations in the coming weeks and months, we urge you to address these and other issues with the overarching goals of avoiding disruptions in existing coverage, promoting affordable coverage for working families and employers, and establishing workable regulatory structures in the early years of the reform process. The manner in which these issues are addressed will have a significant impact on the success of the major health reforms in 2014 and beyond.

Thank you for considering our recommendations on these important issues.

Sincerely,

American Benefits Council
National Association of Manufacturers
National Retail Federation
U.S. Chamber of Commerce