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August 10, 2010

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

Attention: OCIIO-4150-IFC

Comments on CFR 75 27171 submitted electronically at http://www.regulations.gov

Dear Ladies and Gentlemen:

On behalf of the 3.2 million members of the National Education Association, I am pleased to provide comments on the Interim Final Rule and Proposed Rule on Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of Children to Age 26 Under the Patient Protection and Affordable Care Act (PPACA), 75 Fed Reg. 27122-27140, (May 13, 2010). NEA has long supported health care reform efforts that would provide access to affordable and comprehensive health care coverage for all Americans while, at the same time, working towards improving the U.S. health care system. NEA greatly values and appreciates the hard work of the Departments of the Treasury, Labor, and, Health and Human Services in drafting and finalizing these and other regulations related to the new health care law.

The following are the NEA's comments on 75 Fed Reg. 27122-27140, Part 147—Health Insurance Reform Requirements for the Group and Individual Health Insurance Markets:

1. **§147.120(a). In general.** The interim final rule implies that health plans can terminate the health care coverage of an adult dependent on the day of the dependent's 26th birthday.

   NEA requests that the Departments require employer plans to keep dependents on the health plan to the end of the calendar year in which the adult dependent turns 26 (and not on the adult dependent's 26th birthday). This would reduce consumer confusion about when the benefit ends and would parallel the Internal Revenue Service guidelines (IRS Notice 2010-38) on the tax treatment of health benefits to the end of the calendar year in which the dependent child turns 26.

2. **§147.120(b). Restrictions on plan definition of dependent.** NEA requests that the Departments clarify and define the term "employees' children." For example:

a) Would children of domestic partners for whom the employee is the legal guardian be considered "employees' children" under the PPACA? In the case of a domestic partnership there can be a child who has not been adopted by the employee. How would the PPACA address this category of dependent?

   NEA urges a broad definition of "employees' children" in order to cover as many children as possible.

b) The interim final rule specifically excludes grandchildren, but what about other children, such as a niece or nephew, who may reside with the employee, are chiefly dependent on the employee and for whom the employee has assumed legal responsibility? How would these children be addressed under the PPACA?

   Again, NEA urges a broad definition of "employees' children" in order to cover as many children as possible.

3. **Part 147.120 (g). Special rule for grandfathered group health plans.** The interim final rule notes that a group health plan "**may** exclude an adult child who has not attained age 26 from coverage only if the child is eligible to enroll in an eligible employer-sponsored health plan...."

   a) Please clarify whether a parent's grandfathered group health plan **can** enroll an adult child who has not attained age 26 who is eligible for employer-sponsored health plan, if the plan chooses to do so.

      Certain health plan sponsors have indicated that the PPACA prohibits a grandfathered group health plan of a parent/guardian from enrolling an adult child under the age of 26 who is eligible to enroll in an employer-sponsored health plan of their own.

      NEA interprets this special rule as optional on the part of the plan sponsor.

b) Since many young adults work part-time or in jobs that offer exorbitantly expensive and/or limited benefit health plans, please clarify whether a grandfathered group health plan could give the option to include an employee's adult child who has not attained age 26 if the adult child is eligible for an employer-sponsored plan that:

   i) Requires a premium of 8 percent or more of the adult child's income toward cost of coverage, and/or,
   ii) Adult child's income is less than 400 percent of federal poverty level, and/or,
   iii) Offers only a bare bones or mini-med health plan coverage and/or policies, and/or,
   iv) Offers a plan that includes stringent pre-existing condition exclusions and other types of waiting periods for enrollees more than 19 years of age.

   NEA believes young adults with employer-sponsored coverage that is extremely expensive, has a low level of benefits, and/or has harsh pre-existing condition exclusions should have the option to enroll in the parent's plan.

c) If an adult dependent who has not reached the age of 26, is receiving COBRA benefits through a former employer or a spouse's former employer, could the adult dependent switch to their parent's grandfathered health plan or would the adult dependent's COBRA coverage be considered other employer-sponsored coverage?

   NEA believes that due to the exorbitant cost of COBRA premiums, young adults up to the age of 26 should have the option of enrolling in their parent's employer-sponsored plan even if they have COBRA through a former employer or a spouse's former employer.

d) Certain health insurers have noted that adult children under the age of 26 enrolled in a public and/or public/private plan may not be eligible to enroll in a parent's employer-sponsored plan. Please clarify whether the rule permits grandfathered employer plans to exclude an employee's adults child under the age of 26 from enrolling in the employees' health plan in these circumstances.

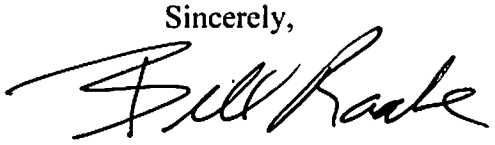
   NEA believes that this decision should be left up to the employee in the grandfathered plan to determine if they can afford the higher premium (if any) to add an adult child under the age of 26 to the plan or if from a financial and benefits standpoint that it is best for the adult child to stay on the public or public/private plan.

4. **Health Savings Accounts.** Internal Revenue Code § 223, which covers health savings accounts (HSAs), was not changed under the health reform law. Due to the lack of a change, it would seem that HSAs cannot reimburse medical expenses for adult children on a tax free basis unless the adult child qualifies as a tax dependent of the holder of the HSA. Also, these nonqualified reimbursements would then be subject to income inclusion and penalties which increases to 20 percent by 2011.

NEA believes that under the PPACA health savings accounts should be treated the same as other health care reimbursement account arrangements.

Thank you again for all your hard work and for clarifying the issues that have come up for NEA members and their health plans. We anxiously await your responses to these comments.

Sincerely,



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