August 16, 2010

The Honorable Kathleen Sebelius
Office of Consumer Information and Insurance Oversight
Department of Health and Human Services
Attention: OCIIO-9991-IFC
7500 Security Blvd.
Baltimore, MD 21244

RE: Comments regarding Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act; Interim Final Rule and Proposed Rule – OCCIO-9991-IFC

Dear Secretary Sebelius:

Thank you for the opportunity to offer comments on the above-referenced Interim Final Rule relating to Section 1251 of the Patient Protection and Affordable Care Act (the Affordable Care Act), Public Law 111-148. As you know, the Affordable Care provides that certain group health plans and health insurance coverage existing as of March 23, 2010 are subject only to certain provisions of the Affordable Care Act, and these plans and health insurance coverage are referred to as "grandfathered" health plans. We applaud efforts to preserve the ability of individuals to maintain their coverage that existed prior to March 23, 2010 and would like to respond to requests from the Departments of Treasury, Labor and Health and Human Services (the Departments) for comments regarding the types of changes to grandfathered health plans that would trigger a loss of grandfathered status.

Based in Nashville, Tennessee, Healthways is the largest and most experienced health, wellness and chronic care management company in the world. We work with over 1000 employers and more than 100 health plans, and impact approximately 40 million people a day. Healthways' specialized, comprehensive solutions help people maintain or improve their health and well-being, and have been proven to reduce overall health care costs. With integrated comprehensive solutions, Healthways coordinates and manages the health of individuals no matter where they are on the health continuum: from the healthy wanting to stay healthy to those at risk for developing serious conditions, to those already dealing with chronic conditions or diseases. Our Web solutions, telephonic and face-to-face interactions with skilled professionals (including nurses, dietitians, fitness coaches, nutritionists and social workers) are examples of some of the methods we use to reach and influence participants to assure measurable improvements in health for people of all ages. Healthways has over 26 years of industry experience enhancing our solutions that have resulted in member satisfaction, clinical outcomes and cost savings at scalable levels. Several studies from both the commercial and government sectors demonstrate positive clinical results and financial savings; the studies can be found at www.healthways.com/success/library.aspx.

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1. Non-Grandfathered Provisions on Prevention and Wellness

In accordance with the Affordable Care Act, the Interim Final Rule proposes language expressly stating that subtitles A and C of title I of the Patient Protection and Affordable Care Act are excluded from grandfathered health plan coverage. Accordingly, the following wellness and prevention provisions of the Public Health Services Act (the PHS Act) are not mandated for grandfathered plans: 2705 (Prohibiting Discrimination Against Individual Participants and Beneficiaries Based on Health Status, including a subsection on Programs of Health Promotion or Disease Prevention); 2713 (Coverage of Preventive Health Services); 2717 (Ensuring the Quality of Care)

Section 2705 of the PHS Act enhances wellness discounts permitted by the Health Insurance Portability and Accountability Act (HIPAA), which allows employers to reduce the cost of health insurance premiums for employees participating in wellness programs. Pursuant to HIPAA, workplace wellness programs often provide incentives for employees who eliminate or reduce unhealthy behaviors such as smoking cessation, maintenance of a healthy weight and keeping healthy blood pressure and cholesterol levels. Under the PHS Act, beginning January 1, 2014, group health plans can offer reductions of up to 30% of the cost of premiums to employees who participate in wellness programs. The Department of Health and Human Services (HHS) also has the discretion to expand this incentive to 50%.

Section 2713 of the PHS Act provides that policies beginning on or after September 23, 2010 must cover certain preventive health services without any cost sharing. This includes, at a minimum, evidence-based items or services that have in effect a rating of 'A' or 'B' in the current recommendations of the United States Preventive Services Task Force and certain immunizations and screenings. A plan or issuer can provide coverage for services in addition to those recommended by the Task Force or deny coverage for services that are not recommended by such Task Force.

Finally, Section 2717 of the PHS Act describes a number of health care quality activities required for quality reporting by health plans and defines the means by which these activities can be delivered and who can deliver them. Specifically Section 2717(a) includes "implementing wellness and health promotion activities" in the list of "quality reporting" requirements for health plans for the purposes of improving health outcomes. Section 2717(b) further provides that "wellness and health promotion activities" include "personalized wellness and prevention services, which are coordinated, maintained or delivered by a health care provider, a wellness and prevention plan manager, or a health, wellness or prevention services organization that conducts health risk assessments or offers ongoing face-to-face, telephonic or web-based intervention efforts for each of the program's participants, and which may include the following wellness and prevention efforts: (1) Smoking cessation, (2) Weight management, (3) Stress management, (4) Physical fitness, (5) Nutrition, (6) Heart disease prevention, (7) Healthy lifestyle support and (8) Diabetes prevention.

2. Comments regarding Changes that Trigger Loss of Grandfathered Status

Since passage of the Affordable Care Act, there has been significant uncertainty regarding the extent to which changes can be made to a plan or health insurance coverage and still have the plan or coverage considered the same as that in existence on March 23, 2010, so as to maintain status as a grandfathered health plan. We disagree with suggestions that any change would cause a plan or health insurance coverage to be considered different and thus cease to be a grandfathered health plan.

As currently written, the Interim Final Rule provides two sets of rules for determining maintenance of grandfathered status. The first addresses when benefits are reduced. The second addresses increases to fixed- amount and percentage-based cost-sharing requirements that are imposed on individuals for covered items and services. The Interim Final Rule also limits how much an employer can reduce its contribution rate for coverage under a group health plan or group health insurance coverage and still maintain grandfathered status. It also addresses what happens to grandfathered status when annual limits are imposed or changed. The Preamble to the Interim Final Rule specifies that changes other than those just described will not cause a plan or coverage to cease to be a grandfathered health plan, including changes to voluntarily comply with provisions of the Affordable Care Act. Accordingly, the Final Rule permits a grandfathered health plan to offer increased wellness or preventive care benefits, such as those mentioned above, and maintain grandfathered status, as long as the plan meets benefit reduction and cost-sharing requirements.

In order for grandfathered health plans to compete in a changing market and to enable them to offer comprehensive and effective plan benefits, it is important to clarify that grandfathered plans are permitted to implement voluntary provisions of the Affordable Care Act, such as those addressing wellness and prevention, without losing grandfather status. We therefore propose the following amendments to the Interim Final Rule's definition of "grandfathered health plan coverage", as provided at 45 CFR 147.140 –

> (a) *Definition of grandfathered health plan coverage—(1) In general*—(i) Grandfathered health plan coverage means coverage provided by a group health plan, or a group or individual health insurance issuer, in which an individual was enrolled on March 23, 2010 (for as long as it maintains that status under the rules of this section). A group health plan or group health insurance coverage does not cease to be grandfathered health plan coverage merely because on or more (or even all) individuals enrolled on March 23, 2010 cease to be covered, provided that the plan or group health insurance coverage has continuously covered someone since March 23, 2010 (not necessarily the same person, but at all times at least one person). Provided that grandfather status is otherwise maintained pursuant to paragraph (g) of this section, group health plan or group health insurance coverage does not cease to be grandfathered health plan coverage if, after March 23, 2010, the plan or group health insurance coverage is changed to include new or updated benefits and/or to include changes to voluntarily comply with provisions of the Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act, Public Law 111-152 or any implementing regulations,

> including, but not limited to, any changes involving enactment of provisions specified in paragraph (c)(1) of this section.
>
> (c)(1) . . . Accordingly, provisions of PHS Act sections 2701, 2702, 2703, 2705, 2706, 2707, 2709, . . . 2713, 1715A, 1716, 2717, 2719, and 2719A, as added or amended by the Patient Protection and Affordable Care Act, do not apply to grandfathered health plans. However, grandfathered health plans may voluntarily implement any of these sections, provided that grandfather status is otherwise maintained pursuant to paragraph (g) of this section.

We also propose the following technical clarification to 45 CFR 147.140(g) in order to clarify a statement in the Preamble to the Interim Final Rule specifying that changes other than those specifically described in the Interim Final Rule will not cause a plan or coverage to cease to be a grandfathered health plan:

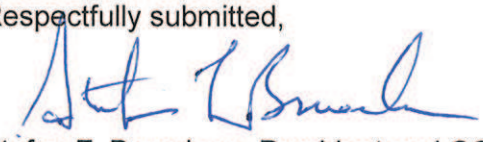
> (g)(1) *Changes causing cessation of grandfather status.* Subject to paragraph (g)(2) of this section, the rules of this paragraph (g)(1) describe the only situations in which a group health plan or health insurance coverage ceases to be a grandfathered health plan.

3. Final Words

In conclusion, Healthways believes that the proposed clarifications will help encourage grandfathered health plans to enact voluntary provisions in the Affordable Care Act. Because of uncertainty surrounding the factors that trigger loss of grandfather status, failure to expressly allow enactment of these provisions may inadvertently discourage positive steps forward in expansion of prevention and wellness benefits that are an important component of overall health care quality.

We thank you for your time and consideration of our comments. Please do not hesitate to contact me if you have any additional questions or would like any additional information.

Respectfully submitted,



Stefen F. Brueckner, President and COO