March 27, 2019

Submitted electronically via http://www.regulations.gov

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS–9923-NC
P.O. Box 8013, Baltimore, MD 21244–8050

Re: Request for Information Regarding Grandfathered Group Health Plans and Grandfathered Group Health Insurance [CMS-9923-NC]

Dear Sir or Madam:

I write on behalf of the American Benefits Council ("Council") to provide comment in connection with the Request for Information regarding Grandfathered Group Health Plans ("RFI") published in the *Federal Register* on February 25, 2019 by the Department of Health and Human Services, Department of Labor and Department of the Treasury ("the Departments") (84 Fed. Reg. 5969).

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to health and retirement plans that cover more than 100 million Americans.

As discussed in the RFI, the Departments are gathering public input in order to better understand the challenges that group health plans and group insurance issuers face in avoiding a loss of grandfathered status for purposes of the Patient Protection and Affordable Care Act (PPACA) and to determine whether there are opportunities for the Departments to assist such plans and issuers, consistent with the law, in preserving the grandfathered status of group health plans in ways that would benefit employers, employee organizations, plan participants and beneficiaries and other stakeholders.

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COMMENTS

The Departments note in the RFI that the numbers of grandfathered plans have declined each year since PPACA was enacted. The Council surveyed its member plan sponsor members and found that the vast majority offer plans that do not have grandfathered status.

The comments that follow reflect input from the few companies that reported offering one or more plans that have maintained grandfathered status. The comments respond to questions posed in the RFI.

What challenges do group health plan sponsors and group health insurance issuers face regarding retaining the grandfathered status of a plan or coverage?

The challenges reported include restrictions on increases in premiums, copays and deductibles based on allowed percentages over the 2010 levels. The restriction on increases allowed for prescription drug co-payments was most challenging, given that prescription drug inflation exceeds medical inflation.

For group health plan sponsors and group health insurance issuers that have chosen to preserve grandfathered status of their plans or coverage, what are the primary reasons for doing so?

The primary reasons reported were reduced regulatory burden and savings in claims and administrative costs. One employer indicated a savings of about 2% a year which was one-half its average annual medical trend. Grandfathered plan status was also preserved where the plans was subject to a collective bargained agreement or acquired in a merger or acquisition.

If grandfathered status is preserved so that particular PPACA requirements will not apply to the plan, specify the particular PPACA requirements not included in the grandfathered plan and explain any related concerns.

The PPACA requirements not in the grandfathered plans as reported by the few Council member companies with such plans included coverage of preventive care without employee cost-sharing, external review for claims and appeals and coverage of routine costs associated with clinical trials.

What is the typical change in benefits, employer contributions or employee organization contributions, and cost-sharing requirements that causes a grandfathered group health plan or grandfathered group health insurance coverage to lose its grandfathered status?

Changes in employee cost-sharing was the reported reason for relinquishment of grandfathered status, including, for example, moving to a HSA-qualified high deductible health plan design.

Is preserving grandfathered status important to group health plan participants and beneficiaries? If so, which participants and beneficiaries benefit the most and which, if any, are affected detrimentally by the employer offering grandfathered group health plan coverage?

Plan participants likely to have benefited most were those in the reported grandfathered plans that had lower or more stable prescription drug co-pays as compared to non-grandfathered plans.

Do the grandfathered health plan disclosure requirements in the November 2015 final rules provide adequate, useful, and timely information to plan participants and beneficiaries regarding grandfathered status? If not, how could the disclosure be improved?

Respondents reported that existing disclosure requirements were generally adequate and useful. One employer noted that it may be most important for employees to understand how coverage under a grandfathered plan differs from a non-grandfathered plan, if also offered.

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Thank you for considering these comments. If you have any questions or would like to discuss these comments further, please contact me at (202) 289-6700.

Sincerely,

Kathryn Wilber
Senior Counsel, Health Policy
American Benefits Council