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Committee on Education and the Workforce
Subcommittee on Health, Employment, Labor and Pensions

Rep. Phil Roe, Chairman

Hearing on
Regulations, Costs, and Uncertainty in Employer Provided Health Care

October 13, 2011

Testimony presented by
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Executive Summary

- The goal of grandfathered status was to preserve the ability of American people and employers to keep their current plan if desired. Unfortunately, many employers did like the health plan they offered but have been forced to either lose grandfathered plan status due to restrictive limitations or are seriously considering losing status in the near future.

- The impact of maintaining grandfathered plan status, in addition to the loss of grandfathered plan status, has had significant impact on American workers. As many employers have been challenged with maintaining status, plan enhancements and cost-containing measures have been delayed. For those workers employed by organizations that have chosen to lose grandfathered status, many have witnessed increased premiums and cost-shifting.

- The decision to maintain grandfathered plan status or to lose grandfathered plan status brings numerous burdens to employers. Many of these employers were already offering generous plans to their employees. These burdens include additional time needed for already lengthy renewal cycles and significant consideration around additional procedures, rules, and reporting that would be required if status is lost.

- Employers have recognized financial impact in maintaining grandfathered status. Additional PPACA enhancements, the inability to apply value-based insurance designs, and the inability to continue appropriate cost-sharing measures with employees have added to an already heavy burden on employers. Unfortunately, employers anticipate health plan increases from year to year. However, PPACA, especially for small and mid-size employers, has created substantial financial burdens.

- Employers and advisers are making plan status decisions without firm guidance; operating under "good faith" that they are in compliance with PPACA. Operating under these conditions causes legal expense over the constant pursuit of answers and great concern over making a decision that will cause detriment to the company once final guidance is received.

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By Robyn Piper, Piper Jordan

Thank you Chairman Roe, and members of the Committee for the opportunity to testify today about the impact recognized by employers and employees under the "grandfathering" provisions of the Patient Protection and Affordable Care Act (PPACA).

It is important to note that we must distinguish between types of employer groups and the unique challenges they face under PPACA. To overgeneralize will be a disservice to this hearing. PPACA has impacted the following employer structures: large employers which primarily employ full-time employees and currently offer employer-sponsored coverage; multi-size employers which have a full-time and benefit-eligible population but also have a significant hourly, non-benefit eligible employee population; and, small employer groups. Examples of their unique challenges will be included in this testimony.

Grandfathered regulations were issued to make good on a promise that individuals and businesses could keep their current plan, to provide consumer protections to Americans in order for them to control their own health care and to provide stability and flexibility to insurers and to businesses.[1] Unfortunately, and especially in the group market, these promises have not been widely recognized and, instead, we have experienced a near opposite effect. This is especially true when reviewing the initial assumptions made as to which employers would maintain or lose grandfathered plan status. It was assumed that large employers would likely maintain status for

longer while smaller employers, depending on plan design offered, would choose to lose status. Due to many factors such as increased employer burdens and cost, the opposite result has been recognized.

PPACA burdens are felt by many employers and certainly through many provisions of the law. According to the HR Policy Association, the Administration is recognizing these burdens and has expressed a willingness to work with employers in minimizing burdens under PPACA. As stated in a recent press release, on a Health Care Policy Committee call, several regulatory proposals were described which attempt to streamline the massive information swap between employers, exchanges, and the federal government. Yvette Fontenot, Deputy Director of the Office of Health Reform at HHS, noted that large multi-state employers simply "may not have the capacity to deal with that many reporting requirements." Fontenot recognized that allowing state exchanges to regulate employer ERISA plans would cause problems for plan sponsors and that the administration is trying to minimize potential burdens because it "wants employers to continue to offer coverage."[2] Such recognition is greatly appreciated but it is only one step towards many needed corrections.

Employer Concerns

Flexibility is a key element in a successful employer-sponsored benefits program. Although it has been said that grandfathering allows plans to innovate and contain costs by allowing insurers and employers to make routine changes without losing grandfathered status [1], again, we have recognized the opposite impact. In evaluating plan design, employers who wish to maintain grandfathering must not raise co-insurance charges, nor may they "significantly" raise co-

payment charges or deductibles. Furthermore, they may not lower employer contributions by more than 5 percent. It is very important to note that these limitations are not applied annually which further restricts employers. Modifying plan deductibles, co-insurance, co-payments and contributions is the main method applied by benefits professionals in order to control costs and to improve the health of their employees by customizing plans around demographics and abuse in utilization. The Administration has shown support for such value-based insurance design. A pursuit in maintaining grandfathered status restricts the employer from applying value-based design techniques to drive improvements within the plan. One of our large employers, who made the decision to lose grandfathered plan status this year, did so partially based on the fact that their outpatient service costs were 9% greater than the issuer's benchmark primarily due to usage of emergency rooms (ER). There were 47 claimants with three or more ER visits and two claimants with pain-related conditions who had nine visits each averaging over $1,000 in claims each visit (over $18,000 in total costs for only two claimants). Clearly, our employer needed to protect the plan for all participating employees and, therefore, has elected to increase the deductible for ER visits. Grandfathering restrictions do not allow benefits professionals to properly protect the plan for all participants.

The term "health insurance" has received little other than poor press over the past two years and this has placed pressure on employers to make careful decisions that create the least amount of employee noise. This has added length to the renewal process as it has been difficult for employers to make final program decisions. Typically, for large employers, the renewal process begins approximately six months prior to the actual renewal date. For most of our sponsors, that process now begins approximately eight months prior to renewal which taps into employer

benefit representative resources that are already stretched. All of our large employers have now made the difficult decision to lose grandfathered status in exchange for protecting the plan itself and making appropriate and necessary plan changes. Their next challenge is to develop a careful communication campaign around changes and loss of grandfathering. Employees have been well-advised that loss of grandfathering means that the plan they are being offered either significantly reduces their benefits or increases their out-of-pocket spending above what it was when PPACA was enacted[1]. Employers and advisers must spend money and resources in developing a positive campaign. Although annual communication strategy has always been a part of the renewal process, the task is even tougher in terms of receiving a positive employee response.

Employers need to be in a position of strength for 2014 to avoid the stiff penalties that PPACA has indicated. Most of our employers offer plans ranging between a 70% to a 90% actuarial value. PPACA states that a 60% actuarial value is the minimum in order to avoid penalty exposure. Advisers and employers are working with 60% actuarial models to run penalty analysis. Ultimately, most employers will begin to offer a 60% actuarial plan in order to protect themselves from high, and still slightly vague, penalties for "unaffordable" plans. It seems unfair for the Administration to set the standard at 60% but penalize employers with loss of grandfathered plan status as employers make necessary plan changes that will eventually lead to their 2014 benefit offering.

Employer Burdens

It has been frequently noted that the pursuit to maintain grandfathered status does not allow for normal annual plan evaluation or the ability to implement value-based design methods. To maintain status requires acceptance of necessary rate increases and budget increases for employee-benefit spending. Such acceptance seems contrary to what PPACA's supporters wished to accomplish.

In weighing the decision of whether to lose grandfathered status or not, employers must consider the additional requirements that come with non-grandfathered status:

- Comply with additional standards for internal claims and appeals and external review.
- Not discriminate in favor of highly compensated individuals for insured health plans.
- Cover emergency services without pre-authorization and treat as in-network.
- Allow designation of gynecologist, obstetrician or pediatrician as primary care provider.
- Cover immunizations and preventive care without cost-sharing.

The requirements related to emergency services and designation of primary care providers have not been significant issues for employers. However, the other requirements have been significant. First of all, an employer will have to deal with the cumbersome appeal provisions. This requires attention to strict time zones. It also requires a number of other administrative tasks including timely notices which, for a small benefits department, even in large organizations, is cumbersome. For a small employer, all this could require the addition of staff as well as add to plan cost administratively. Some companies do not want to give up the ability to handle appeals to a carrier/TPA organization. This is due to the fact that they do not want to relinquish control. Any slip could result in compliance consequences. This is a

significant issue for employers. Currently, employers must meet ERISA guidelines but the expanded standards for appeals adds an additional burden to an already tasked human resource area. Secondly, there is the consequence of discrimination testing although the effective date and related sanctions have been delayed. Without clear guidance, an employer will attempt to comply at this point, but even with an attempt, the effort may not comply. Lastly, preventive care must be covered without cost-sharing. Large employers have not had much difficulty adapting this into their plan design. However, employers with hourly employees, and offering limited-benefit health plans, have had significant issue. Even with a waiver on annual limits, employers wishing to make plan enhancements to their limited-benefit health plan, resulting in loss of grandfathered status, have been met with 11% to 22% premium increases to accommodate the unknown usage that may occur once cost-sharing measures are removed. Although claim history will illustrate that, even when preventive care is included in limited-benefit health plans, the member claim frequency is low – regardless of the strength of the benefit. However, as carriers are preparing for the unknown with removal of cost-sharing, we have seen premium increases as high as 22% for preventive care. Small employers are also at risk for premium increases due to loss of cost-sharing. As a small employer who received a 25% increase at renewal, I can strongly testify that PPACA and loss of grandfathering status can have a profound effect on certain employer groups.

Financial Impact

It has been well-noted that PPACA provisions and loss of grandfathered status has caused an increase to health insurance premiums. For employers maintaining grandfathered status last year, depending on type of employer group and plan, PPACA provisions added an additional 1%

to 4% to premium cost. For non-grandfathered plans, the steepest increases were, and continue to be, received by small employers and employers offering limited-benefit health plans. For both small and large employers last year, some struggled with removing lifetime limits. For a majority of employers, this made very little impact. However, there were some employers that were required to continue care for members that had exceeded their lifetime maximum. While employers felt good about bringing members back into a plan, it is important to understand some of the consideration that took place between issuers, employers and advisers in order to handle increases in claim spending. One example is a very large employer of ours with a member who had exceeded their lifetime maximum due to hemophilia. This member's medicine was more than $35,000 a month. Significant work was done in an attempt to reduce the employer's increased pharmacy exposure. Unfortunately, tremendous relief was not available. Employers need help in controlling these costs. Financial burdens have been placed on employers but we have not recognized an increase in resources to reduce these burdens.

Impact to Employees

As many employers are financially incented to lose grandfathered status in order to control costs, this has resulted in higher deductibles and higher cost-shift to employees. This is primarily happening with the large employer sector. These design changes are necessary to control unnecessary utilization, to control employer premium spending and to reduce the risk of penalties in 2014. However, these design strategies have had a financial impact to the employee typically in the form of increased out-of-pocket costs.

Job stability and continuation will be an issue for hourly employees. As many hourly employees work unpredictable schedules, and have enjoyed the ability to do so, there is risk to an employer who has an hourly employee that consistently increases and decrease hours worked. While IRS Notice 2011-36 proposes safe harbor whereby employers could use a look-back period to determine full-time employees for a coverage period, there is still a risk to employers who do not strictly define hours and position. Many employers are entertaining the implementation of specific job hour limits in order to protect the organization from penalties. Hour limits will reduce the employee's take home pay which most certainly will negatively impact employees.

A well-circulated Q&A document posted on HealthReform.gov[3] tells the consumer that the grandfathered rule will allow them to keep their current coverage if they like it. Further, they are told that the new insurance regulation will not drive up health insurance costs. This Q&A is still posted on HealthReform.gov even though we know these two statements to not be entirely true. PPACA provisions, employer burdens and general health care trend have caused loss of grandfathered status and has most certainly caused health insurance costs to increase.

Summary

It has been said that the grandfathered provision was put in place to keep employers offering insurance and to prevent employers from cutting benefits. Contrary to popular debate, a mass majority of employers want to continue offering meaningful benefits and grandfathering was not needed as an enforcement measure. The grandfathered provision has created cumbersome restrictions on many employers and added unnecessary costs to many plans, creating an adverse scenario than desired by the Administration. A number of thoughtful considerations have been

provided to the Administration as it relates to concerns around the grandfathered provision. Such considerations include the unduly restrictive rules and the need for clarification on wellness programs. To date, employers and advisers had not been provided with a response. Employers have been forced to operate under good faith that they are in compliance and understand that there is risk to such an assumption. There is tremendous need for guidance from the Administration. Grandfathered provisions have not rewarded the most generous employers. In many instances, employers finding the greatest ease with compliance are those who offered the least generous plans.

Thank you for the opportunity to testify today. I will be happy to answer your questions.

ENDNOTES

[1] "Fact Sheet: Keeping the Health Plan You Have: The Affordable Care Act and 'Grandfathered' Health Plans," U.S. Department of Health and Human Services, HealthReform.gov, http://www.healthreform.gov/newsroom/keeping_the_health_plan_you_have.html.

[2] "Administration Wants to Work With Employers to Minimize Burdens Under PPACA, HR Policy Association, http://www.hrpolicy.org/issues_story.aspx?gid=33&sid=4606&miid=3

[3] Questions and Answers: Keeping the Health Plan You Have: The Affordable Care Act and "Grandfathered" Health Plans, HealthReform.gov, http://www.healthreform.gov/about/grandfathering.html