

National  
Coalition on

# BENEFITS

September 3, 2015

The Honorable Thomas E. Perez  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

The Honorable Sylvia Burwell  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

The Honorable Jacob J. Lew  
Secretary  
U.S. Department of Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Dear Secretaries Perez, Burwell and Lew:

The National Coalition on Benefits (“NCB”) is again expressing concern over a recent policy change that applies the annual limitation on cost sharing for self-only coverage to all individuals in non-grandfathered group health plans, regardless of whether the individual is covered by a self-only plan or by family coverage. This action was initiated by the Department of Health and Human Services (“HHS”) as a note in the Preamble of a rule, and then applied to the large group market through FAQs. We are concerned that this change was done without statutory justification and appropriate rulemaking process.

For the reasons laid out in this letter and our earlier communication, we are requesting at a minimum that the agencies grant employers a one-year delay before applying this new requirement.

This change did not follow the rules of the Administrative Procedure Act (“APA”), which would have required a proposed rule, followed by a period of time for stakeholders to comment, and a final rule that responds to comments raised. Failing to follow this required process is exacerbated by the untenable application of this new out of pocket (OOP) requirement to 2016 plan year to coverage for both small and large groups.

The NCB is a coalition of national businesses and employer associations established to support the employer-sponsored health care system and ensure that companies can continue to provide health benefits in a uniform manner nationwide. NCB works with Congress and the Administration to ensure that federal and state health reform initiatives preserve, rather than erode, protections guaranteed by the Employee Retirement Income Security Act (“ERISA”). More than 160 million Americans obtain coverage through employer-sponsored health plans and, increasingly, a core component of the services that these plans are expected to deliver relates to quality improvement, patient safety and wellness.

On June 22, we wrote that this new policy has had a significant impact on our health plans at a time when plans have generally completed their benefit and compliance reviews. Plan sponsors have had to reconsider cost-sharing, including whether to raise deductibles in order to offset the new OOP rule, as well as other benefit design changes. The new policy also requires system changes that require time and resources to implement. Finally, this policy change was announced at a time when employers are working to address the complex administrative and financial challenges imposed by the employer shared responsibility and reporting provisions effective this year under the Affordable Care Act (“ACA”).

Importantly, many companies across the country are unaware that this policy change has been made. This new requirement isn’t codified and clarification of its application to the large group market came at a very late date in the process.

The NCB believes that the ability of employers to voluntarily offer and maintain benefit plans is an integral part of our health care system. However, this system cannot continue if employers are not provided with the regulatory consistency, simplicity and predictability necessary continue to provide high-quality, cost-effective benefits to their employees and their families. We urge that this clarification be withdrawn immediately and that further rulemaking affecting group health plans follow the APA rules that are intended to incorporate all stakeholder views.

At a minimum, the application of this new requirement should be delayed until the 2017 plan year.

Thank you for considering our comments on this important issue. We urge you to address these concerns immediately.

Sincerely,

The National Coalition on Benefits

cc:

Phyllis C. Borzi  
Assistant Secretary of Labor  
Employee Benefits Security Administration  
U. S. Department of Labor

Kevin Coughlin  
Director & Marketplace Chief Executive Officer  
Center for Consumer Information and  
Insurance Oversight  
Centers for Medicare and Medicaid Services  
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Mark Iwry  
Senior Advisor to the Secretary and Deputy Assistant Secretary for Retirement and Health Policy  
U. S. Treasury Department