

**Congress of the United States**  
**U.S. House of Representatives**  
**Committee on Small Business**  
2361 Rayburn House Office Building  
Washington, DC 20515-6515

December 13, 2012

The Honorable Kathleen Sebelius  
Secretary  
U.S. Department of Health and Human Services  
Centers for Medicare and Medicaid Services  
Room 445-G, Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 20201  
Submitted via regulations.gov

Re: Patient Protection and Affordable Care Act; Standards Related to Essential Health Benefits, Actuarial Value and Accreditation, 77 Fed. Reg. 70,644 (November 26, 2012); File Code CMS-9980-P

Dear Secretary Sebelius:

On November 26, 2012, the United States Department of Health and Human Services (“HHS” or “Department”) published a proposed rule<sup>1</sup> outlining essential health benefits and actuarial value required to be covered by health insurers under the Patient Protection and Affordable Care Act<sup>2</sup> (“PPACA” or “the law”). The proposed rule also provides a timeline for qualified health plans to be accredited in federally-funded health exchanges and an application process for the recognition of additional accrediting entities for the certification of qualified health plans.

I. Introduction

Small businesses have serious concerns about the affordability of the requirements in the proposed rule. These big mandates have the potential to add significantly to the cost of health care and health insurance, making both even more unaffordable for small businesses. Although the proposed rule purports to allow states flexibility by implementing broad categories of benefits, the breadth of the required benefits package, and the cost of it, may put health insurance even further out of reach for small firms. Because one of the Administration’s stated purposes of the law was to make health insurance more affordable,<sup>3</sup> the proposed rule may ultimately act to produce a result that contravenes

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<sup>1</sup> 77 Fed. Reg. 70,644.

<sup>2</sup> Pub. L. No. 111-148, 124 Stat. 119 (2010), codified at 42 U.S.C. §18001.

<sup>3</sup> See <http://www.healthcare.gov/law/features/choices/exchanges/index.html>.

that intent. Small firms have already cut plans for expanding or hiring.<sup>4</sup> A November Wells Fargo-Gallup Small Business Index survey found that U.S. small businesses expect to add fewer net new jobs in the next 12 months than at any time since the record lows of the 2008-2009 recession.<sup>5</sup> In fact, 21% of small business owners in the November 2012 survey said they expect to decrease jobs at their companies over the next 12 months. Clearly, small businesses don't need the cost of higher health insurance premiums to further dampen the outlook.

## II. Determination of "Essential Health Benefits"

The law provides for the establishment of an Essential Health Benefits ("EHB") package that includes the coverage of benefits equal in scope to the benefits covered by a typical employer plan and include at least the following service categories: ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventative and wellness services and chronic disease management; and pediatric services, including oral and vision care.<sup>6</sup>

In defining the benefits package, the law requires the Secretary of HHS to take into account, among other things, the needs of diverse segments of the population.<sup>7</sup> This would include the segments of the population that are small business owners.

## III. Impact on Small Businesses

The proposed rule requires that states select a health plan offered in that state as an "EHB base-benchmark" plan,<sup>8</sup> one which covers the categories of benefits mandated by the Act, and does not allow denials of EHB based on age, life expectancy, or disability.<sup>9</sup> Since some state-selected plans may not cover the full panoply of statutorily required benefit categories, those plans must be supplemented by benefits from another policy.<sup>10</sup> Virtually all small businesses will be forced to supplement state-selected policies that will not include coverage for mental health, substance abuse, pediatric dental and vision, habilitative care and additional prescription drugs. As a result, the proposed rule acknowledges that small business owners and others will be required to purchase more expensive coverage. There are many small business owners who will struggle to afford any coverage, let alone the comprehensive or "supplemental" coverage envisioned by the proposed rule. Others will simply not be able to provide

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<sup>4</sup> The Small Business Committee has received numerous comments from small business owners who have postponed expanding and/or hiring and reduced employee hours or cut back employees. House Small Business Committee, "Open Mic" interactive website comments (on file with Committee staff).

<sup>5</sup> Wells Fargo-Gallup Small Business Index, November 2012, *available at* [https://www.wellsfargo.com/press/2012/20121130\\_WFSBIQ4](https://www.wellsfargo.com/press/2012/20121130_WFSBIQ4).

<sup>6</sup> Pub. L. No. 111-148, 124 Stat. 119, 120 (2010), codified at 42 U.S.C. § 1302(a), codified at 42 U.S.C. § 18022.

<sup>7</sup> *Id.*

<sup>8</sup> 77 Fed. Reg. at 70,649.

<sup>9</sup> 77 Fed. Reg. at 70,645.

<sup>10</sup> 77 Fed. Reg. at 70,650.

coverage and be forced to pay the penalty. Requiring policies to cover extensive benefits will only make health insurance more, not less, expensive.<sup>11</sup>

Small business owners have told us that the cost of health insurance continues to escalate.<sup>12</sup> Although the Department claims that the health care law and its rules provide “flexibility,” any flexibility is provided within expensive and mandatory categories of benefits, which will increase the cost of premiums for small businesses. And because, under the proposed rule, supplemental coverage will be required to cover additional benefits listed in the rule but not already covered under a state’s selected benchmark policy, “flexibility” for states and affordability for small businesses are illusory.

Health insurers that are small businesses are also likely to be affected. Compared to large insurers, small insurers are already operating at a disadvantage. Economy of scale and other factors mean their cost of doing business is higher. Because the proposed rule requires health insurers to offer coverage of an extensive array of benefits, health insurers are likely to pay more claims.<sup>13</sup> Under the law and the proposed rule, health insurers will also have fewer bases on which to deny claims.<sup>14</sup> One must also consider the impact of higher taxes and other fees on insurers in 2014 that will help to finance the law.<sup>15</sup>

#### IV. Conclusion

The law and this proposed rule’s mandates are likely to cause both health insurance to become even more costly for small business owners who seek health coverage, and operating more costly for small insurers that sell it. I hope the final rule will consider these burdens and that HHS will revise the proposed rule accordingly. Should you have questions about these comments, please contact Jan Oliver of the Committee staff at 202.225.5821.

Sincerely,



Sam Graves  
Chairman

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<sup>11</sup> See, e.g., *What the Supreme Court’s Health Law Ruling Means for Most Consumers*, WALL ST. J., June 28, 2012, available at <http://online.wsj.com/article/SB10001424052702304870304577486332188975276.html>, and *Health Insurance Ruling Won’t Make Coverage Cheaper for Most Americans*, The Huffington Post, June 28, 2012, available at

[http://www.huffingtonpost.com/2012/06/28/health-insurance-ruling-supreme-court-costs\\_n\\_1634555.html](http://www.huffingtonpost.com/2012/06/28/health-insurance-ruling-supreme-court-costs_n_1634555.html).

<sup>12</sup> House Small Business Committee, “Open Mic” interactive website comments (on file with Committee staff).

<sup>13</sup> 77 Fed. Reg. at 70,647, 60,650 and 70,651.

<sup>14</sup> 77 Fed. Reg. at 70,652.

<sup>15</sup> These include annual taxes on insurance companies, pharmaceutical companies and medical device manufacturers. The taxes will be assessed based on earned insurance premiums. See Chris Carlson, *Annual Tax on Insurers Allocated By State 4*, Oliver Wyman (November 2012).