

NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

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Submitted via <http://www.Regulations.gov>

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Donna Laverdiere
Office of Consumer Information and Insurance Oversight
Department of Health and Human Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Avenue, SW.
Washington, DC 20201

Re: OCHIO-9989-NC

Dear Ms. Laverdiere:

The National Coordinating Committee for Multiemployer Plans (the NCCMP) is pleased to provide these comments regarding the Request for Comments on the Exchange-related requirements of the Patient Protection and Affordable Care Act published by the Departments of Labor, Treasury, and Health and Human Services (the “agencies”) on August 3, 2010, reference number OCHIO-9989-NC.

The NCCMP is the only national organization devoted exclusively to protecting the interests of the approximately twenty-six million workers, retirees, and their families who rely on multiemployer plans for retirement, health and other benefits. The NCCMP’s purpose is to assure an environment in which multiemployer plans can continue their vital role in providing benefits to working men and women. The NCCMP is a nonprofit, non-partisan organization, with members, plans, and plan sponsors in every major segment of the multiemployer plan universe, including in the airline, building and construction, entertainment, health care, hospitality, longshore, manufacturing, mining, retail food, service and trucking industries.

In this comment letter, we raise issues that will be important to the participants and beneficiaries currently receiving health benefits from multiemployer plans when the new Exchange system becomes effective in 2014. Many of the issues important to these plan participants are identified, but we would appreciate the opportunity to develop these comments further both in writing and through meetings with staff from the Office of the Exchange.

Background

Multiemployer plans, established and maintained through collective bargaining and structured in accordance with the Taft-Hartley Act provisions of the National Labor Relations Act, serve

participant populations in industries where employment is historically fluid, such as the construction trade, maritime, entertainment and the hotel and restaurant industries. Participants often move from one contributing employer to another. Contributing employers may be very small and may not have access to sophisticated payroll technology. Small employers may be unable to obtain affordable health care insurance due to their size or the age of the workers. The multiemployer fund enables small employers to pool their resources, and mobile employees to pool their service with many different employers, to achieve critical mass to make it cost-efficient to provide group health coverage.

Multiemployer plans receive health plan enrollment, eligibility, and premium payment information from contributing employers. Typically, contributing employers pay an amount to a multiemployer plan that is set forth in a collective bargaining agreement. The amount is based on the number of hours, days or weeks of covered work performed by a covered employee (or another relevant measure of work in the industry). Generally, work is performed in a “work period” and that work earns eligibility during an “eligibility period.” Often there is a gap between the “work period” and the “eligibility period” during which reports on covered service and the related contributions are transferred from the contributing employer to the fund. Based on that input, the plan calculates eligibility for the covered employee.

As an example, a plan may require that a plan participant work 200 hours in a 2-month “work period” to gain eligibility in a subsequent “coverage period.” Typically, work performed in a calendar month is reported by a specific date (the twentieth day) in the subsequent month; therefore, if an employee completes the necessary hours to meet this standard based on work during January and February, the plan would receive documentation during March, and the employee would earn eligibility for the April-May “coverage period.”

The plans are familiar with how to determine eligibility for benefits based on hours of work reported by a contributing employer. Plans have established employer reporting, collection, and billing systems to assure that benefit eligibility is maintained. Similarly, multiemployer plans are accustomed to transferring eligibility information and, in some cases, premiums, to claims payers, either on an insured or Administrative Services Only (ASO) basis.

In addition, multiemployer plans and their third-party administrators often use unique electronic and paper forms for conducting transactions between the plan and the employer, and between the plan and its health care providers. Many of these forms are customized to the characteristics of the industry and to the special needs and work patterns of the population served by the multiemployer plan.

Moreover, in multiemployer plans, employee and employer representatives play equal roles in making all plan design and operational decisions including eligibility, coverage, plan design, administration, funding (insured, ASO arrangements, partially insured or fully self-insured), selection of the plan’s delivery systems, and selection of plan service providers and advisors. Unlike a typical single employer program in which the employer generally has complete, unilateral discretion, this joint labor-management organizational structure gives the employees an equal voice in all plan matters.

The Affordable Care Act envisions Health Insurance Exchanges that would function as a marketplace for affordable coverage for individuals and small groups. However, the Act provides little detail about how any employer (small or large) would go about providing benefits through the Exchange. Although the Act does not provide a requirement for employers to provide a contribution toward coverage, we assume any framework would have some minimum contribution that the employer would be required to pay toward coverage. How enrollment would occur is also not spelled out for employers in the legislation, although the Act appears to require employee selection of the actual plan within a range of a benefit level (i.e., bronze, silver, gold and platinum).

Since the structure of how enrollment and other administrative functions would work in the Exchange is not set out in the Act, there do not appear to be any impediments to a multiemployer fund playing a role in the Exchange process. Language could be developed to ensure that the Exchange is implemented in regulations with the unique features of multiemployer plans in mind. This would provide stability to both the contributing employers and participants who currently receive benefits through multiemployer plans based on the work patterns in their industry.

1. What Exchange design features are likely to be most important for employer participation, including the participation of large employers in the future? What are some relevant best practices?

- Multiemployer plans are uniquely positioned to address the needs of workers who frequently change employers or whose work fluctuates based on economic cycles. The rules of the Exchange need to consider this workforce and assure that existing arrangements that provide full credit for work performed at multiple employers can continue to exist. If there is no multiemployer plan sponsoring the benefit, it would be difficult to create a mechanism to credit hours worked for multiple employers and use that as a basis for eligibility for coverage.
- Individuals and contributing employers to multiemployer plans should be able to use the plan to communicate with the Exchanges regarding eligibility and employer contributions.
- Standards for when an individual who has employer-sponsored coverage can enroll in the Exchange must be clearly set forth so that both employer-sponsored plans and the Exchange can avoid uncertainty and adverse selection.
- Multiemployer plans should be able to serve as the conduit to the Exchange for contributing employers and plan participants, both with respect to reporting eligibility and contributions and selecting from benefit level options. Various roles could exist, including applying to the Exchange, providing eligibility information to the Exchange, tracking and paying Exchange invoices, and making decisions for contributing employers regarding benchmark plan selection and contribution amounts.

- Existing multiemployer plans provide administrative services with respect to plan administration, including enforcing employers' contribution obligations, administering COBRA, and extended coverage under the FMLA. These functions should be able to be continued by the plan when plan participants are enrolled in an Exchange.
- The multiemployer plan should also have the option of providing one application to one or more state Exchanges for all the contributing employers to participate. The contribution level and benchmark plan would be decided by the Board of Trustees. The multiemployer plans
- would continue to administer the collection of the contribution amount and track eligibility under existing eligibility rules.
- Multiemployer plans should be able to send out information about how enrollment with the Exchange works; and receive, track and pay invoices from the Exchange.
- The collective bargaining agreements and trust agreements that currently establish the multiemployer trust and the responsibilities of contributing employers must be considered when establishing timelines or effective dates for Exchange functions to begin.
- Multiemployer plans often provide benefits to employees who reside in more than one state, or who live in one state and work in another. Such arrangements are currently common and are achieved through reciprocal arrangements that provide mechanisms for contributions received in the work location to be forwarded to the home plan for purposes of maintaining eligibility. Exchange rules would have to provide coverage across state lines when appropriate.

2. What factors are important for consideration in determining the employer size limit (e.g., 50 versus 100) for participation in a given State's Exchange?

- For multiemployer plans, regulations will need to determine whether size rules will be based on the size of the individual employers who contribute to the plan or whether the number of participants will be aggregated and therefore treated as a large group. It should be noted that the vast majority of employers that contribute to multiemployer plans are small businesses and in many industries over 90% of which employ fewer than 20 employees.

3. What considerations are important in facilitating coordination between employers and Exchanges? What key issues will require collaboration?

- The Act establishes a Navigator program under which it awards grants to entities that can demonstrate that they have existing relationships or could establish relationships with employers and employees likely to be eligible to enroll in a qualified health plan. The duties of entities that serve as Navigators could include: conducting public education activities; distributing fair and impartial information concerning enrollment and the availability of premium tax credits and cost-sharing reductions; facilitating enrollment; helping individuals address complaints and questions about their health plans and coverage determination; and providing information in a manner that is culturally and linguistically appropriate.

- As the Department develops rules on the Navigator program, we encourage you to provide flexibility in regulations that would permit multiemployer plans to become Navigators to the extent that it would facilitate providing information about the Exchanges to both participants and contributing employers. Multiemployer plans have a long history of providing a bridge between employers, unions, plan administrators, insurers, and participants and their families. Although the landscape for 2014 and beyond is still unclear, we believe that this flexibility should be included in the regulations so that if being a Navigator is an appropriate role for a multiemployer plan, it is available.
- Some multiemployer plans may be able to communicate with the Exchanges to help track participants who enroll in Exchanges and assist contributing employers in their obligations to comply with the employer mandate/free rider penalty (e.g. makes sure coverage meets any minimum standards). This function should be voluntary, as each plan's trustees will need to determine whether the plan is able to provide these services.

4. What other issues are there of interest to employers with respect to their participation in Exchanges?

- With respect to the penalties applicable to employers who fail to provide affordable coverage (e.g., the “free rider penalty” or the “free choice voucher”) the regulations need to consider the multiemployer plan and how it will function with respect to whether a contributing employer has met its statutory obligations.
- Regulations need to enable employees covered by multiemployer plans to be carved out from the rest of a contributing employer's workforce, when testing employers' compliance with their obligations under the law and when determining sanctions in the event an employer falls short. In fact, the advantages of the multiemployer model that enable employees to accumulate eligibility while moving among participating employers should be encouraged rather than viewed as, or presenting obstacles to plan participants and participating employers.
- The Departments should review whether multiemployer plans would be able to be qualified health plans and therefore participate directly in the Exchange as a coverage option, and if so what rules would apply.
- As rules are developed concerning multistate regional exchanges, consideration should be given as to the interaction of such Exchanges with multiemployer plans.

We appreciate the opportunity to comment on these proposed rules and, as noted above, would be happy to elaborate on our thoughts should you decide to hold meetings, hearings or provide additional venues for such an exchange of ideas.

Respectfully submitted,



Randy G. DeFrehn
Executive Director