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April 25, 2011

Martique Jones
Director, Regulations Development Group, Division B
Office of Strategic Operations and Regulatory Affairs
Centers for Medicare and Medicaid Services
7500 Security Boulevard, Room C4-26-05
Baltimore, MD 21244-1850

RE: **CMS – 10373 -- Emergency Clearance: Public Information Collection Requirements Submitted to OMB Mini-Med and Expatriate Plans Reporting Form**

Dear Ms. Jones:

WellPoint Inc. (WellPoint) appreciates the opportunity to comment upon the Public Information Collection Requirements pertaining to the “Mini-Med and Expatriate Plans Reporting Form” published in the Federal Register on Friday, March 25, 2011 (76 Fed. Reg.16789). This Form arises out of the Section 158.110 of the Interim Final Rule entitled “**Health Insurance Issuers Implementing Medical Loss Ratio (MLR) Requirements under the Patient Protection and Affordable Care Act**” (“MLR IFR”) published in the December 1, 2010 Federal Register (75 Fed. Reg. 74864).

WellPoint is the nation's largest health benefits company in terms of medical enrollment, with more than 33 million members in its affiliated health plans, and a total of more than 69 million individuals served through its subsidiaries. As an independent licensee of the Blue Cross and Blue Shield Association, WellPoint serves members as the Blue Cross licensee for California; the Blue Cross and Blue Shield licensee for Colorado, Connecticut, Georgia, Indiana, Kentucky, Maine, Missouri (excluding 30 counties in the Kansas City area), Nevada, New Hampshire, New York (as the Blue Cross Blue Shield licensee in 10 New York City metropolitan and surrounding counties and as the Blue Cross or Blue Cross Blue Shield licensee in selected upstate counties only), Ohio, Virginia (excluding the Northern Virginia suburbs of Washington, D.C.), and Wisconsin. In a majority of these service areas, WellPoint does business as Anthem Blue Cross, Anthem Blue Cross and Blue Shield, Blue Cross and Blue Shield of Georgia, Empire Blue Cross

Blue Shield, or Empire Blue Cross (in the New York service areas). WellPoint also serves customers throughout the country as UniCare.

Overall Recommendation: Because the mini-med / expatriate plan reporting form is not yet final despite the rapidly-approaching first reporting deadline of May 1, 2011, WellPoint recommends that the CMS exercise its discretion to delay health insurers' compliance with this provision until such time as the form is finalized, issued in electronic format, and a filing electronic address is established, but in any event no earlier than August 1, 2011.

As support for our recommendation, we note that in the Preamble to the MLR IFR, HHS stated that

The information collection requirements associated with §§ 158.101–158.170 will become effective upon OMB approval. HHS will publish a notice in the Federal Register notifying the public of OMB approval at the appropriate time. (Preamble to MLR IFR, 75 Fed. Reg. at 74891)

Even if OMB approves the information collection request on or before May 1, 2011, there will be a mad scramble at the last minute as health insurers fill out the (paper) reporting forms and try to determine where to file them at CMS. A better approach would be for CMS to use its discretion to postpone the reporting deadlines in order to give health insurers appropriate advance notice of the specific requirements.

Timing of release of form

The MLR IFR provides for special MLR treatment of so-called “mini-med”¹ and expatriate plans, with special reporting requirements and a special adjustment to the MLR for these types of plans. Section 158.120 (d)(3) requires that health insurers report the experience of mini-med and expatriate plans separately from more comprehensive health insurance coverage that insurers write. Section 158.110 (b)(2) of the IFR requires that health insurers report mini-med /expat experience quarterly “on a form and in the manner prescribed by the Secretary.” The IFR itself does not set out that form or the manner of reporting. The first reporting deadline is May 1, 2011.

However, the Public Information Collection request states that CMS is requesting OMB review and approval by May 1, 2011. Given that health insurers must file their report for these plans on or before May 1, 2011, this timeframe puts insurers in the impossible situation of having to report information in a form and manner that has not yet been finalized, or will be finalized just a few days before the reporting deadline. Requiring health insurers to comply with the May 1 filing deadline will probably result in paper reports arriving at HHS headquarters and being misrouted, requiring refiling and more administrative burden placed upon insurers and HHS.

¹ Just as HHS does, we are using the term “mini-med” plan to mean health insurance policies having a total annual limit of \$250,000 or less.

Recommendation: WellPoint recommends that CMS allow health insurers to report mini-med / expat experience for the first and second quarters of 2011 no earlier than August 1, 2011 to allow sufficient advance notice of the specific form and filing requirements.

Electronic filing of form and reporting address

The “Supporting Statement for Emergency PRA” in the Public Information Collection request states that “[t]he quarterly reports will be submitted electronically to the Secretary by issuers for each respective State and market in which it conducts business.” However, the reporting forms attached to the request are not electronic but rather pdf forms.

Additionally, the Supporting Statement indicates that health insurers must file the electronic reports “to an internet address to be prescribed by the Secretary in separate guidance.”

WellPoint is filing these comments on April 25, just 5 business days from the May 1 filing deadline required by the MLR IFR. For the past several months WellPoint has been preparing and compiling the data for this reporting without having any idea of what specific data elements will be required by the reporting form or even where the report is to be filed.

Recommendation: WellPoint recommends that any obligation to report mini-med / expat business be deferred until both the electronic form, and the Internet website where the report is to be filed, are finalized. This will avoid duplicate filings in paper format sent to HHS general headquarters, and will avoid administrative burden on health insurance issuers and HHS.

Materiality threshold and voluntary nature of reporting

It is unclear whether the mini-med / expat reporting is mandatory for all health insurers issuing such business, or whether a health insurer must make the report only if it wishes to apply the special MLR adjustment for mini-med / expat business. Our confusion is generated by HHS’ various conflicting statements on this issue.

For example, compare and contrast the following statements:

Statements Implying Voluntary Reporting

- “As discussed in sections 4. and 5. below, mini-med plans and expatriate plans wishing to receive the “special circumstances” adjustment discussed in those sections would be required under § 158.110(b)(1) to submit data on an accelerated schedule.” (Preamble to MLR IFR, 75 Fed. Reg. at 74869)
- “Also, in order to determine whether, and if so what type of, an adjustment may be appropriate for 2012, mini-med plans that wish to avail themselves of this special circumstances adjustment in § 158.221(b)(3) for 2011 will be required to report MLR data on a quarterly schedule under § 158.110(b).” (Preamble to MLR IFR, 75 Fed. Reg. at 74872)

- “In addition, as described above, we are requiring issuers who opt to separately report the experience for expatriate plans and mini-med plans to submit quarterly reports in 2011, so that we can better understand these products.” (Preamble to MLR IFR, 75 Fed. Reg. at 74891)

Statements Implying Mandatory Reporting

- “Section 158.120(d) also . . . (3) provides for separate reporting in 2011 for mini-med plans that have a total annual limit of \$250,000 or less and for expatriate plans.” (Preamble to MLR IFR, 75 Fed. Reg. at 74869)
- “One exception is that we are requiring health insurance issuers who sell expatriate plans or mini-med plans to disaggregate that business from the rest of their business in that market segment and report the MLR data separately.” (Preamble to MLR IFR, 75 Fed. Reg. at 74891)

Recommendation: WellPoint recommends that only those health insurers that want to avail themselves of the special MLR adjustment for mini-med and expatriate plans be required to separately report the experience of those plans. For some insurers, such as WellPoint, the administrative burden of collecting the separate experience on just a few mini-med or expat plans far outweighs any benefit that would inure to them by taking advantage of the special MLR adjustment, or to HHS by having to separately report the experience.

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WellPoint appreciates this opportunity to offer our comments on this information collection request. Should you have any questions or wish to discuss our comments further, please contact Judith Langer at (414) 459-6062 or Judith.A.Langer@WellPoint.com.

Sincerely,



Anthony Mader
Vice President, Public Policy