Hogan Lovells

Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
T +1 202 637 5600
F +1 202 637 5910
www.hoganlovells.com

May 18, 2010

By Hand Delivery

Hon. Kathleen Sebelius
Secretary of Health and Human Services
United States Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Room 120F
Washington, DC 20201

Hon. Hilda Solis
Secretary of Labor
United States Department of Labor
200 Constitution Avenue, N.W.
Room S-2018
Washington, DC 20210

Hon. Timothy Geithner
Secretary of the Treasury
United States Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Room 3330
Washington, DC 20220

Re: Application of Certain Provisions of the Patient Protection and Affordable Care Act to Limited Scope Dental and Vision Benefits

Dear Secretary Sebelius, Secretary Solis, and Secretary Geithner,

On behalf of the National Association of Dental Plans, the National Association of Vision Plans, and VSP, which are described briefly at the end of this letter, we are writing to request that you confirm that limited scope dental and vision benefits provided under a separate plan or policy will continue to be exempt from the substantive requirements of Part A of Title XXVII of the Public Health Service Act (PHSA), and the parallel provisions of the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986 (the Code), after the changes made to those laws by the Patient Protection and Affordable Care Act (PPACA) become effective, to the same extent that they are under current law.

We understand that there are separate provisions that apply with respect to the stand-alone pediatric dental benefits that are envisioned under PPACA to be offered inside Exchanges beginning in 2014. With respect to dental benefits, this letter seeks clarification on the treatment of dental benefits other than those pediatric dental benefits.

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Today, roughly 97 percent of dental and vision benefits are provided separately from medical coverage through separate plans that are designed and sold largely by companies or affiliates of health insurance issuers who specialize in these services. These specialists have developed the expertise necessary to provide the highest quality of services including meaningful benefits, robust provider networks, and cost efficiencies gained from experienced management.

Currently, these separate plans are exempt from the substantive requirements of Part A of Title XXVII of the PHSA (and the parallel provisions of ERISA and the Code). We believe it is clear that Congress intended to continue to exempt these plans from those requirements. However, an amendment to the exemption provision in PPACA (labeled a "technical and conforming amendment"), which duplicates an earlier amendment to the very same exemption provision, creates an ambiguity by changing the cross-references in the exemption. As explained in the attached memorandum, we believe this was a technical drafting error. To summarize, the language in the second amendment that creates this ambiguity was imported word-for-word from the health reform bill prepared by the Senate Health, Education, Labor, and Pensions (HELP) Committee. It did not raise any similar concerns in that context. However, when the Senate Finance and Senate HELP Committees' health reform bills were consolidated to create what became PPACA, the new numbering system adopted for Part A of Title XXVII of the PHSA, caused certain cross-references found in the language to become incorrect.

We believe that the erroneous renumbering of cross-references in the second amendment should not be misread to subject separate dental and vision plans to the provisions of Part A of Title XXVII of the PHSA (or the parallel provisions of ERISA and the Code). Those provisions have never applied to such plans, and many of them were not even amended by PPACA. There is nothing to indicate that a "technical and conforming amendment" was intended to make such a substantive change. Indeed, the interim final rules relating to dependent coverage that were released on May 10, 2010, describe the changes made by PPACA to the sections that include the existing exemption for separate dental and vision plans as minor: "PHS Act sections 2722 through 2728 are sections of prior law renumbered with some, mostly minor, changes."[1]

In conclusion, we believe that separate dental and vision plans should continue to be exempt from the substantive requirements under Part A of Title XXVII of the PHSA, and the parallel provisions of ERISA and the Code, just as they were prior to enactment of PPACA. We believe that a drafting error occurred, which can be explained by examining the legislative history of the health reform legislation. We believe it is clear that Congress intended to continue the exemption, and respectfully request that you confirm that conclusion.

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[1] Sec. I, Background, Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of Children to Age 26 under the Patient Protection and Affordable Care Act, at p. 7; 75 Fed. Reg. 27121, 27123 (May 13, 2010).

Thank you for your attention to this matter. We would be happy to discuss any questions you have about separate dental and vision plans and this important issue.

Sincerely,

Kurt L.P. Lawson

Partner
kurt.lawson@hoganlovells.com
D 202 637 5660

The **National Association of Dental Plans (NADP)** is the representative and recognized resource for the dental benefits industry. As NADP's member dental plans provide dental benefits (dental HMOs, dental PPOs, discount dental plans and dental indemnity products) to more than 80 percent of the 176 million Americans with dental benefits, NADP is the largest national non-profit trade association representing this industry segment. NADP's members include major commercial carriers, regional and single-state companies as well as carriers organized as Delta and Blue Cross Blue Shield plans.

The **National Association of Vision Care Plans (NAVCP)** is the trade association for the Managed Vision Care industry serving as the voice for the vision benefits industry. The mission of the NAVCP is efficient consumer access to quality vision care through promotion and advancement of the vision benefits industry. The NAVCP strives to improve quality and efficiency in the delivery of vision care for consumers and providers and promotes the value and importance of vision care and vision benefits to both consumers and employers. The 16 primary member companies manage extensive networks of vision care providers and include vision benefit coverage to over 75 million Americans.

VSP® Vision Care is the largest not-for-profit vision benefits and services company in the United States covering 55 million members (1 in 6 Americans). Since 1955, over half of all Fortune 500 corporations, the FEHBP through FEDVIP, Medicare, Medicaid and 30,000 other employers have relied on VSP for funded eye health coverage.

Enclosures

cc: Jay Angoff
Director, Office of Consumer Information and Insurance Oversight
Office of the Deputy Secretary
United States Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

Jeanne Lambrew, PhD
Director, Office of Health Reform
United States Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

Phyllis C. Borzi
Assistant Secretary
Employee Benefits Security Administration
United States Department of Labor
200 Constitution Avenue, N.W.
Suite S-2524
Washington, DC 20210

Amy J. Turner
Senior Advisor and Special Projects Manager
Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
United States Department of Labor
200 Constitution Avenue, N.W.
Room N-5653
Washington, DC 20210

J. Mark Iwry
Senior Advisor to the Secretary and Deputy Assistant Secretary for Retirement and Health Policy
United States Department of the Treasury
15th & Pennsylvania Avenue, N.W.
Room 3064 MT
Washington, DC 20220

George H. Bostick
Benefits Tax Counsel
Office of Tax Policy
United States Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Room 3120
Washington, DC 20220

Helen H. Morrison
Deputy Benefits Tax Counsel
Office of the Benefits Tax Counsel
Office of Tax Policy
United States Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Room 3050
Washington, DC 20220