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November 12, 2007

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS—4129-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

RE: Special Enrollment Period for volunteers Outside of the United States
§406.25 and §407.21

To Whom It May Concern:

I am writing regarding the proposed rule (4129-P) that was published pursuant to changes incorporated in the Deficit Reduction Act of 2005. I am anxious to see the promulgation of regulations that will enable volunteers of 501(c)(3) organizations to realize the benefit of the special enrollment period (SEP) that was anticipated in the Act, and applaud CMS efforts to accomplish this. However, I believe the proposed rule is not clear in one respect and could be interpreted in a way that will frustrate the intent of the statute and make it difficult for these volunteers to confidently take action. I respectfully ask that care be taken in crafting the language of the final regulations to ensure that the intent of the act is upheld.

I am the President and Chief Executive Officer of Deseret Mutual in Salt Lake City, Utah. We administer a specialized medical plan that is designed for volunteers of the Church of Jesus Christ of Latter-day Saints (LDS Church) who serve in assignments outside of the United States. This plan was created because Medicare does not provide benefits for medical services incurred in a foreign country, and it is extremely difficult for individuals to obtain an affordable commercial policy that will meet their needs.

Special Enrollment Period and Medicare Premiums

It is not my intent to provide a comprehensive and sophisticated legal analysis of the laws and regulations relating to the Medicare special enrollment period and related special premium provisions. I have been around long enough to remember the time when Medicare was primary to employer plans, and I remember the transition to the policy that made Medicare secondary to employer plans. I remember the philosophical discussions

surrounding that change, which focused on the potential that individual Americans with employer-sponsored insurance who continued to work beyond age 65 could be required to pay two premiums – one for Medicare Part B and one for their employer-sponsored medical plan. In addition, the enrollment provisions of Medicare would negatively impact these individuals when they retired unless special provisions were made and the late enrollment penalties were waived. As a result, the SEP was established to allow American workers to enroll in Medicare in a way that it would coincide with their retirement, penalty-free. I have always believed, from the philosophical perspective, that the plight of the international volunteers who purchase other medical insurance while they are serving in assignments outside the country is very similar.

- Our international volunteers are required to have medical coverage while they are serving outside of the United States. They must, therefore, purchase a policy at their own expense, with very little subsidy from the LDS Church.
- Medicare will not pay (neither primary nor secondary benefits) for medical services these volunteers incur outside of the United States.
- These volunteers do work – they are not compensated for their service, but they work very hard.
- It seems that the philosophical foundation for the SEP and special premium provisions would also apply to volunteers who are required to pay for a medical plan, and who are not capable of receiving any value from Medicare.

Administrative Remedies to the Problem of International Volunteers with Dual Medical Premiums

For several years Deseret Mutual worked with the Healthcare Financing Administration (HFCA) and CMS to see if there was any possible way there could be an administrative solution that would allow volunteers eligible for Medicare and serving in a foreign country qualify for the SEP, which would enable them to disenroll or not enroll during their period of service without premium penalty. In the most recent discussions we had with CMS, in 2004 and 2005, it seemed that an administrative solution might be possible. However, in the end, there was always a red flag or road block which made it appear that we would never achieve an acceptable administrative solution to the problem.

Amendments Included in the Deficit Reduction Act of 2005

Because of the inability to achieve an acceptable administrative solution, Senator Orin Hatch proposed an amendment to the Deficit Reduction Act of 2005, which amended Section 1835 of the act by adding the new subsection (k) which provided for a special enrollment period for international volunteers beginning January 2007. The intent of this amendment by the sponsor was to provide relief to international volunteers of 501(c)(3) organizations from the administrative restrictions that prevented them from delaying initial enrollment or disenrolling from Medicare without incurring penalties. These

penalties included an inability to qualify for the SEP and the resulting surcharge on their Part B premium.

I was personally involved with the crafting of the language that was included in the statute, along with staff members in the United States Senate and the Senator himself. There is no misunderstanding on my part or their part with respect to the intent of the amendment. It was expected that this amendment would make it possible for international volunteers to qualify for the SEP and related premium provisions that are made available to people who continue to work for an employer who provides a medical plan.

Problems with the Proposed Rule CMS-4129-P

The proposed rule contains several descriptions of the requirements for international volunteers to qualify for the SEP and related premium provisions under the new §407.21. Four of the five statements that refer to the 12-month requirement state that the international volunteer must be “serving in a program outside of the United States that covers at least a 12-month period” or “is in a program that covers at least a 12-month period of service outside of the United States.” These statements seem to be consistent with the intent of the Act, Section 1837(k)(3), which states that “an individual qualifies as an international volunteer if he/she is serving in a program outside of the United States that covers at least a 12-month period....”

However, the statement in Section III – Collection of Information Requirements (page 55155 of the Federal Register) states that “the individual must (1) Volunteer in a program for a 12-month or longer period of service outside of the United States.” This is a subtle but very significant difference. This statement, depending on how it’s interpreted, could frustrate the intent of the statute.

In March 2007, prior to publishing the proposed rule, CMS issued Social Security Administration instructions (HI 00805.350) stating:

“Section 5515 of the Deficit Reduction Act of 2005, provides a 6-month special enrollment period (SEP) for SMI and/or Premium-HI for individuals who:

- Performed volunteer service outside of the U.S. through a program sponsored by a tax exempt organization (See HI 00805.350B for definition of sponsoring organization) for at least 12 consecutive months.”

We objected to these instructions because they did not state that the individual must serve “in a program” that covers a 12-month period of time, but must have actually “performed volunteer service... for at least 12 consecutive months.” The instructions therefore frustrated the intent of the law. We hoped the proposed rule would provide clarity that would help international volunteers receive the benefit anticipated in the amendment to the Deficit Reduction Act. Our concerns are, however, that the proposed rule is inconsistent in its language, which provides no clarification at all. Taken together, the

statements cited previously create confusion and seem to allow for different interpretations, depending on which section is used and who is doing the interpreting. If the desire is to implement the apparent intent of the Social Security Administration instructions, then both the instructions and the proposed rule clearly frustrate the intent of the law. This is evidenced by the fact that not a single international volunteer that we are aware of has attempted to take advantage of the anticipated benefits of the statute since its effective date of January 1, 2007.

International volunteers enrolled in Deseret Mutual's medical plan are assigned a term of service that is at least 18 months or longer. In other words, they do serve in a program that covers at least a 12-month period. We understand, and the international volunteers understand, that in accepting their assignment, they are expected to serve the full term of the assignment. This is in actual practice what happens. According to our data, in the last five years 4,737 individual senior missionaries over age 65 have been assigned outside of the United States. Of this number, only 37 have returned home within twelve months of leaving. These individuals all had to return home early due to unforeseen circumstances outside of their control. This clearly demonstrates that the intent of this program is for volunteers to serve for a period that is longer than twelve months.

The statement in Section III of the proposed rule may be interpreted to mean that an individual must actually serve outside of the United States for 12 consecutive months. If this interpretation is applied, missionaries must make a calculated determination as to whether or not they are willing to take the risk that they may be among the few that have an unfortunate experience that would require them to return to the United States before 12 months have passed. They must understand that, if this happens, they may be without Medicare coverage for three to fifteen months and their Part B premium might be surcharged for the rest of their lives. It is our feeling that most will not be willing to take that risk because the consequences are so egregious.

It seems that the intent of the changes incorporated in the Deficit Reduction Act was to help international volunteers who were required to purchase health insurance. It also seems very clear that the language of the statute provides an opportunity for CMS to help. Again, I respectfully request that those involved take care to promulgate a final regulation that unambiguously helps international volunteers achieve the objectives that were intended in the statute.

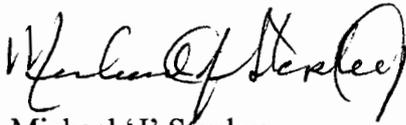
Suggested Change to the Proposed Rule (4129-P)- Implementing Changes Incorporated in the Deficit Reduction Act of 2005

I would strongly recommend that you change the language in the final rule to make all of the references internally consistent and make it clear that the 12-month period applies to a "program" rather than the time actually served. This would mean that a person who is assigned to a program that lasts 12 or more months would qualify for the SEP and related Medicare premium provisions. If something unforeseen happens that cuts the term of their service shorter than 12 months, they would still qualify because the program they

were assigned to lasts more than 12 months. This correction must be made in the instructions to Social Security as well.

Attachment I contains an example of suggested language that may accomplish this objective.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Stapley". The signature is written in a cursive style with a large, prominent initial "M".

Michael 'J' Stapley
President & CEO

MJS/jr

ATTACHMENT I: Suggested Wording

§ 406.25 Special enrollment period for volunteers outside the United States.

(a) *General Rule.* An individual described in paragraph (b) qualifies for a SEP, as defined in § 406.24(a)(4) of this subchapter, if –

- (1) At the time the individual first met the requirements of §§ 406.10 through 406.15 or § 406.20(b), the individual elected not to enroll in premium Part A (hospital insurance) during the individual's initial enrollment period; or
- (2) The individual terminated enrollment in premium Part A (hospital insurance) during a month in which the individual was described in paragraph (b) of this section.

(b) *Volunteer Outside the United States.* For purposes of paragraph (a) of this section, an individual is described in this paragraph if at the time such individual is first described in paragraph (a)(1) or (a)(2) the individual –

- (1) Is serving as a volunteer outside of the United States through a bona fide program that covers at least a 12-month period and that is sponsored by an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code;
- (2) Can demonstrate that he or she has health insurance that covers medical services that the individual receives outside the United States while serving in the program; and
- (3) Can demonstrate that he or she has a good faith intent to serve in the program for at least 12 months.

An individual will not cease to qualify under this paragraph (b) if the individual serves in the program described in paragraph (b)(1) for less than 12 months due to circumstances that were not reasonably foreseeable at the time the individual terminated the individual's enrollment in premium Part A (hospital insurance).

(c) *Duration of SEP.* The SEP is the 6-month period beginning on the first day of the month which includes the date that the individual no longer meets the description in paragraph (b) of this section.

(d) *Effective date of coverage.* If the individual enrolls in premium Part A (hospital insurance) in accordance with a SEP authorized by this section, coverage begins on the first day of the month following the month in which the individual enrolls.

§ 407.21 Special Enrollment Period for volunteers outside the United States.

(a) *General Rule.* An individual described in paragraph (b) qualifies for a SEP, as defined in § 406.24(a)(4) of this subchapter, if –

- (1) At the time the individual was first eligible to enroll or to be deemed enrolled in premium Part B (SMI), the individual elected not to enroll or to be deemed enrolled; or
- (2) The individual terminated enrollment in premium Part B (SMI) during a month in which the individual was described in paragraph (b) of this section.

(b) *Volunteer Outside the United States.* For purposes of paragraph (a) of this section, an individual is described in this paragraph if at the time such individual is first described in paragraph (a)(1) or (a)(2) the individual –

(1) Is serving as a volunteer outside of the United States through a bona fide program that covers at least a 12-month period and that is sponsored by an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code;

(2) Can demonstrate that he or she has health insurance that covers medical services that the individual receives outside the United States while serving in the program; and

(3) Can demonstrate that he or she has a good faith intent to serve in the program for at least 12 months.

An individual will not cease to qualify under this paragraph (b) if the individual serves in the program described in paragraph (b)(1) for less than 12 months due to circumstances that were not reasonably foreseeable at the time the individual terminated the individual's enrollment in premium Part B (SMI).

(c) *Duration of SEP.* The SEP is the 6-month period beginning on the first day of the month which includes the date that the individual no longer meets the description in paragraph (b) of this section.

(d) *Effective date of coverage.* If the individual enrolls in premium Part B (SMI) in accordance with a SEP authorized by this section, coverage begins on the first day of the month following the month in which the individual enrolls.