




DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Consumer Information and
Insurance Oversight
Washington, DC 20201

Date: October 2010

From: Steve Larsen, Director, Office of Oversight 

Subject: Application for Waiver of the Annual Limits Requirements of PHS Act Section 2711

Dear Waiver Applicant:

Section 2711(a)(2) of the Public Health Service Act (PHS Act), as added by the Patient Protection and Affordable Care Act (Affordable Care Act), requires the Secretary to impose restrictions on the imposition of annual limits on the dollar value of essential health benefits (as defined in section 1302(b) of the Affordable Care Act) for any participant or beneficiary in a new or existing group health plan or a new policy in the individual market for plan or policy years beginning on or after September 23, 2010 and prior to January 1, 2014. Specifically, the Secretary is granted the authority to determine what constitutes a "restricted annual limit" that can still be imposed under such plans or policies prior to January 1, 2014.

The interim final regulations published on June 28, 2010 (codified at 26 CFR § 54.9815-2719T; 29 CFR § 2590.715-2719; and 45 CFR § 147.126) established such restricted annual limits. The regulations also provided that these restricted annual limits may be waived by the Secretary of Health and Human Services (HHS) if compliance with the interim final regulations would result in a significant decrease in access to benefits or a significant increase in premiums. Pursuant to the regulation, HHS issued guidance on September 3 regarding the scope and process for applying for a waiver.

The Office of Consumer Information and Insurance Oversight, Office of Insurance Oversight received and processed your application for the plan(s) or policy(ies) year beginning January 1, 2011. We have determined that your application has met the criteria to obtain a waiver of the restricted annual limits requirements because compliance with the interim final regulations would result in a significant decrease in access to benefits for those currently covered by such plans or policies, or a significant increase in premiums paid by those covered by such plans or policies. To the extent you make any change to your benefit package after March 23, 2010, you must determine whether the change(s) will trigger loss of grandfathering status pursuant to 45 CFR § 147.140(g)(1).

An approval of your request for waiver of the restricted annual limits requirements granted under this process applies only to the annual limit(s) provided in your application for the plan or policy year beginning between September 23, 2010 and September 23, 2011. This waiver only applies to the annual limits requirements in Section 2711 of the ACA and does not apply to any other requirement of the Affordable Care Act, ERISA, the IRS Code or the PHS Act. Further, a group

health plan or health insurance issuer must reapply for any subsequent plan or policy year prior to January 1, 2014 when this waiver expires in accordance with future guidance from HHS. HHS may modify this waiver approval process memorandum and other relevant information.

If you have any questions regarding this letter, please email OCIIOOversight@hhs.gov.

D'ARRIGO BROS. CO.

OF CALIFORNIA ESTABLISHED 1923

Growers, Packers and Shippers of Fresh Fruit and Vegetables

11/15
sup

21777 Harris Road • Salinas, CA 93908
P.O. Box 850 • Salinas, CA 93902-0850
(831) 455-4500 Office (831) 455-4445 FAX
(831) 455-4300 Sales (831) 455-4301 FAX

October 30, 2010

Department of Health & Human Services
Office of Consumer Information and Insurance Oversight
Office of Oversight
Attn: Mr. James Mayhew
Room 737-F-04
200 Independence Avenue Southwest
Washington, DC 20201

Re: Application for Waiver of Annual Limits Requirements of PHS Act
Section 2711 for Plan Effective January 1, 2011

Dear Mr. Mayhew:

Who We Are

D'Arrigo Bros. Co., of California ("D'Arrigo Bros.") is a vertically integrated grower, packer, and shipper of fresh fruits and vegetables marketed under the Andy Boy brand. The Company has farming operations in California in the Salinas and Imperial Valleys, and in Arizona's Yuma Valley. The Company grows, harvests, and markets row crop vegetables which include, but are not limited to, broccoli, iceberg lettuce, romaine, romaine hearts, cauliflower, broccoli rabe, and fennel.

The Company was founded as a partnership in 1923 between two brothers, Andrew and Stephen D'Arrigo. In 1946, after 23 years as a successful partnership, the company was incorporated in the State of California and has continued as a family owned and operated organization with no outside investors.

D'Arrigo Bros.' Field and Shed Self-Insured Mini-Med Health Benefit Plans

D'Arrigo Bros. sponsors two mini-med health benefits plans for its employees and their dependents without which they would likely not have, nor seek out, private coverage. The mini-med health benefit plans cover up to (b)(4) employee participants and their dependents (over (b)(4) employee lives annually) on the Field Plan and over (b)(4) employee participants and their dependents (over (b)(4) employee lives annually) on the Shed Plan.



These plans are each subject to separate collective bargaining agreements (the "Field Agreement" and the "Shed Agreement"). The Field Plan is provided pursuant to D'Arrigo Bros.' existing collective bargaining agreement (the "Field Agreement") with the United Farm Workers of America ("UFW"). The Field Agreement covers all of the employer's agricultural employees in the Salinas Valley and Imperial Valley, California. The Field Plan also covers all of the employer's agricultural employees in the State of Arizona. The Shed Plan is provided pursuant to D'Arrigo Bros.' current collective bargaining agreement (the "Shed Agreement") with the United Food & Commercial Workers. The Shed Agreement covers all of the employer's packingshed, cold box, and processing plant employees in California.

The Field Agreement and Shed Agreement provide that D'Arrigo Bros. pay a set dollar amount of its monthly employees' benefits coverage. Anything above these amounts is subject to a cost sharing arrangement and passed onto the employees. During the respective terms of the current Agreements, these arrangements have resulted in D'Arrigo Bros. paying for (b)(4) of this cost of employee coverage. However, as detailed below, compliance with the annual benefit limitations imposed by the interim final regulations will impose dramatic costs upon employees for the Field and Shed Plans.

D'Arrigo Bros. has long provided health plans because it believes that health benefits coverage is essential and that a healthy workforce is integral to its success. However, due to the changes imposed by Health Care Reform, many of its employees will choose to forego the cost of coverage or (as explained more fully below), the Employer may opt to discontinue coverage. Without a waiver of the annual limitations imposed by the interim final regulations, its employees will be without coverage.

In order to comply with Health Care Reform, D'Arrigo Bros.' mini-med health benefit plans have redefined the dependent definition to include children up to the age of 26, and removed pre-existing condition limitation on children under 19 years of age. Compliance with Health Care Reform would also require both plans to remove lifetime maximums on essential benefits. The mini-med health benefit plans, however, currently have annual benefit limitations much lower than those imposed by the final interim regulations.

The annual limitation for the D'Arrigo Bros. Field Plan is (b)(4) and the annual limitation for the D'Arrigo Bros. Shed Plan is (b)(4). The terms of the plans are attached hereto at Tab "1". The cost to provide the current health benefits per employee per month is based on the annual limits and composite factors detailed and demonstrated with Tab "2". Also included therein is the explanation of how these rates are calculated and how they will increase if subject to compliance with the final interim regulations.

Self-Insured Mini-Med Benefit Plan Essential to Underserved Worker Population

D'Arrigo Bros.' mini-med benefit plans are partially self-insured and were specifically designed for its predominately Hispanic seasonal workforce. Statistically, this group constitutes an underserved population of individuals. Historically, this seasonal workforce has made it very clear that they prefer a bilingual healthcare environment, that they want and expect first dollar healthcare coverage and that they are willing to pay very limited, if any, co-pays or out-of-pocket expenses. D'Arrigo Bros. purposely created and structured its mini-med health benefit plans to reflect these facts as detailed in the attached plan summaries.

D'Arrigo Bros. chose to offer a self-insured model because it removes the profit incentive inherent in the insurance industry. In fact, if these health plans were fully-insured products issued by an insurance carrier, D'Arrigo Bros.' actuaries advise that the cost of the plans would be (b)(4) greater. By crafting a custom health benefit plan for which it holds much of the financial risk at additional cost, D'Arrigo Bros. has been able to provide affordable coverage for its employees and their dependents.

Interim Final Regulations Renders Coverage Unattainable for Employees

Compliance with the interim final regulations will significantly increase the cost of the mini-med benefit plans. The existing Field Agreement and Shed Agreement are structured so that D'Arrigo Bros. currently pays for almost all employee coverage; however, as mentioned above, the Agreements contain cost-sharing provisions. Without a waiver of the annual limits, the expense imposed upon employees will increase their costs of coverage dramatically.

D'Arrigo Bros. is seeking a waiver of the interim final regulations regarding mandatory annual limits for its mini-med health benefits plans because compliance with the mandated annual limits will cause both:

- A significant increase in premiums paid by those covered by the plans;
and
- A significant decrease in access to benefits for those currently covered by the plans.

Under the terms of the Field Agreement, D'Arrigo Bros.' share of the monthly cost of the health coverage for each calendar year shall not exceed (b)(4)

more than its total monthly cost of the plan coverage for the preceding calendar year. Anything above these amounts is subject to the cost sharing arrangement and therefore, increases in excess of (b)(4) per year are entirely borne by the employees in the form of co-payment deductions. After Health Care Reform, the cost increase to the Field Plan is (b)(4), of which (b)(4) of this increase will be passed onto employees. Without a waiver of the annual limits, the projected monthly cost for employees in calendar year 2011 is (b)(4), whereas in 2010 these employees paid (b)(4).

Under the terms of the Shed Agreement, D'Arrigo Bros.' share is annually capped at a pre-set dollar amount and any excess premium cost above these maximum amounts are borne entirely by the employees. Accordingly, the employer's contribution rate for 2011 (effective on February 1, 2011) provides for a (b)(4) increase over the pre-set 2010 contribution rate. Anything above this amount is subject to the cost sharing arrangement and, therefore, any increase in excess of (b)(4) in 2011 is entirely borne by the employees in the form of wage deductions. After Health Care Reform, the cost increase to the Shed Plan is (b)(4), of which (b)(4) of this increase will be passed onto employees. Without a waiver of the annual limits, the projected monthly cost for employees in calendar year 2011 is (b)(4), whereas in 2010 these employees paid (b)(4).

Both Agreements also contain provisions which address prospective plan redesign. In the Shed Agreement, the Plan is subject to change if all employees elect a different (presumably less costly, lower benefit) plan; whereas, in the Field Agreement, if a projected annual cost increase exceeds (b)(4) of what D'Arrigo Bros. paid the previous calendar year, the plan is subject to renegotiations with UFW to discuss redesigning the current Plan to lower benefits and lower costs. However, under either Agreement, the mandated end result does not increase the cap on the Employer's share of costs.

With these provisions of the Agreements in mind, the new annual benefits limitations will have a dramatic effect on the mini-med plans. Employees on the Field Plan currently do not pay a monthly contribution towards the cost of their healthcare. After Health Care Reform, these employees will pay (b)(4) per month ((b)(4) annualized). Employees on the Shed Plan currently do not pay a monthly contribution towards the cost of their healthcare coverage. After Health Care Reform, these employees will pay (b)(4) per month ((b)(4)). The practical reality is that compliance will, at a minimum, force renegotiation of the Field Plan and cause a reduction in, or elimination of, employee benefits. Similarly, it is anticipated that Shed Plan employees, in order to avoid the co-pay, will elect a cheaper plan with lesser benefits or forego coverage altogether if such a plan is not available.

Not only will the cost of coverage increase, but access will decrease because COBRA coverage will skyrocket as well. In the event an employee undergoes a COBRA qualifying event, the cost of COBRA to maintain their coverage will increase (b)(4) for Field Plan single or family coverage. This significantly increases the COBRA rate for Field Plan coverage to a monthly rate of (b)(4). The COBRA rate for Shed Plan coverage would be increased to at least that amount, if not more. The exorbitant increase to the COBRA rates puts this option out of reach, and as a result, few, if any, employees will ever elect COBRA continuation coverage.

It must be noted, with respect to the Field Plan, that the covered employees are seasonally employed farm workers who are covered by the Employer share only for months in which they qualify with work hours eligibility. Due to the seasonal nature of the work, the vast majority of the covered employees qualify in only 8 – 9 months of the year. This necessarily means that, in order to maintain coverage under the Plan, employees must contribute at the COBRA rate during the off-season. Likewise, covered employees under the Shed Plan are seasonally employed only during the agricultural harvest months and would need to contribute at the COBRA rate during the off-season.

Given these costs, it is expected that many employees will forego Plan coverage in favor of relying on public assistance. Without coverage under Field or Shed Plans, employees and their dependents will likely add to the congestion of their local emergency waiting rooms. This will increase the demand on already economically strained public hospitals as well as adding potentially major new caseload and cost pressure to Medi-Cal, which is already overburdened.

Furthermore, D'Arrigo Bros. is currently in the process of negotiating with United Farm Workers ("UFW") regarding the possibility of extending the duration of the existing Field Agreement. These negotiations have included extensive discussion about the prospective costs associated with the Field Plan changes dictated by the Health Care Reform Act. Both parties recognize that, without the waiver of the annual limits, the projected increases in costs for 2011 are prohibitive. D'Arrigo Bros. has advised UFW that it has no intention of absorbing the costs over and above the established (b)(4). Similarly, the UFW has advised D'Arrigo Bros. that the Union will not agree that the employees absorb the costs of Plan compliance. As a result, the Employer has the option on the table to discontinue health coverage altogether effective on January 1, 2011, in the event that the waiver is not granted. For its part, the UFW has communicated that it fully supports this waiver application.

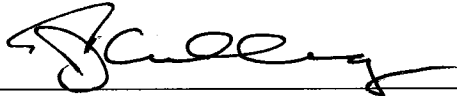
Department of Health & Human Services
Office of Consumer Information and Insurance Oversight
Office of Oversight
Attn: Mr. James Mayhew
October 30, 2010
Page 6

Attached hereto at Tab "3" is an attestation signed by me affirming that the mini-med health benefit plans for which D'Arrigo Bros. is seeking this waiver were in force prior to September 23, 2010 and, as discussed above, the application of restricted annual limits to the mini-med health benefit plans will result in both (1) a significant increase in contribution paid by its employees and COBRA participants; and (2) a significant decrease in access to benefits by those participants who opt out due to the resulting financial burden.

If you have any concerns or questions regarding this application, please contact me at your earliest convenience. Thank you very much.

Very truly yours,

D'ARRIGO BROS. CO., OF CALIFORNIA

By: 
E. John Culligan
Chief Financial Officer

Attachments

Tab "1"

Pages 10 through 17 redacted for the following reasons:

(b)(4)

Tab "2"

Pages 19 through 20 redacted for the following reasons:

(b)(4)

Tab "3"

D'ARRIGO BROS. CO.

OF CALIFORNIA ESTABLISHED 1923

Growers, Packers and Shippers of Fresh Fruit and Vegetables

21777 Harris Road • Salinas, CA 93908
P.O. Box 850 • Salinas, CA 93902-0850
(831) 455-4500 Office (831) 455-4445 FAX
(831) 455-4300 Sales (831) 455-4301 FAX

ATTESTATION IN SUPPORT OF APPLICATION OF WAIVER OF THE ANNUAL LIMITS REQUIREMENTS

I, E. John Culligan, declare that I am the Chief Financial Officer of D'Arrigo Bros. Co., of California.


I hereby attest and affirm that the information contained in this Application is true and correct, except with respect to the cited actuarial information and the attached calculations and composite factors at Tab 2, for which I am informed and believe are true and correct and, on that basis, attest to also be true and correct. The mini-med health benefit plans submitted with this Application were in effect prior to September 23, 2010. The annual plan year renewal date for these plans is January 1st and February 1st, respectively, as further detailed within the Application.

The current annual limit of the D'Arrigo Bros. Field Plan is (b)(4) and the annual limit for the D'Arrigo Bros. Shed Plan is (b)(4). If the annual limit is raised to \$750,000 per year the expense for our employees and their dependents will increase significantly as explained in our Application letter, which is supported by our attached documentation.

The application of restricted annual limits to our mini-med health benefit plans will result in a significant increase in contribution paid by our employees and COBRA participants and a significant decrease in access to benefits by those participants who opt out due to the resulting financial burden, as more fully explained in our Application.

It is imperative that our request for a waiver of the \$750,000 annual limit be granted in order to preserve our employees' health benefits coverage. Without this waiver our employees will be subject to a significant increase in their costs for coverage and/or suffer a significant decrease in access to coverage because they will either: (1) opt out of coverage due to the resulting financial burden, or (2) lose coverage altogether as a result of collective bargaining, as more fully discussed in the Application.

Executed this 11th day of November, 2010 at Salinas, California.

By: 
E. John Culligan,
Chief Financial Officer
D'Arrigo Bros. Co., of California



November 19, 2010

Dear Applicant:

RE: D'Arrigo Brothers (Field Health)

Thank you for your application for the Waiver of the Annual Limits Requirements of the PHS Act Section 2711. In order to complete your application, please provide the following information about D'Arrigo Brothers (Field Health):

1. Provide the number of individuals covered by the plan to include dependents.
2. Indicate if there are essential benefit limits and the amount for the following categories :

<input type="checkbox"/> Ambulatory: \$	<input type="checkbox"/> Maternity: \$
<input type="checkbox"/> Emergency (ER): \$	<input type="checkbox"/> Mental Health/Substance Abuse: \$
<input type="checkbox"/> Hospitalization: \$	<input type="checkbox"/> Rehabilitative: \$
<input type="checkbox"/> Laboratory: \$	<input type="checkbox"/> Preventive: \$
<input type="checkbox"/> Pediatric: \$	<input type="checkbox"/> Prescription (RX): \$

3. (The premium amounts is the total cost to the employer and the employee)

	Premium (Current)	Premium (renewal)	Premium (if \$750,000 annual limit was applied)	% increase if the \$750,000 was implemented
EE				
EE + Child (if applicable or other appropriate tier)				
EE + Spouse (if applicable or other appropriate tier)				
Family (if applicable or other appropriate tier)				

4. Indicate if the plan is fully-insured plan or a self-insured plan.

5. Indicate if this plan has Grandfather Status.

Please provide this information by 5:00 pm Monday November 22, 2010. We look forward to receiving your completed application. Thank you.

Sincerely,

Kathleen M. Scelzo, RN, MSN
Rules Compliance Division
Office of Insurance Oversight
Office of Consumer Information and Insurance Oversight (OCIIO)
Department of Health and Human Services
301-492-4121

November 19, 2010

Dear Applicant:

RE: D'Arrigo Brothers (Shed Plan)

Thank you for your application for the Waiver of the Annual Limits Requirements of the PHS Act Section 2711. In order to complete your application, please provide the following information about D'Arrigo Brothers (Shed Plan):

1. Provide the number of individuals covered by the plan to include dependents.
2. Indicate if there are essential benefit limits and the amount for the following categories :

<input type="checkbox"/> Ambulatory: \$	<input type="checkbox"/> Maternity: \$
<input type="checkbox"/> Emergency (ER): \$	<input type="checkbox"/> Mental Health/Substance Abuse: \$
<input type="checkbox"/> Hospitalization: \$	<input type="checkbox"/> Rehabilitative: \$
<input type="checkbox"/> Laboratory: \$	<input type="checkbox"/> Preventive: \$
<input type="checkbox"/> Pediatric: \$	<input type="checkbox"/> Prescription (RX): \$

3. (The premium amounts is the total cost to the employer and the employee)

	Premium (Current)	Premium (renewal)	Premium (if \$750,000 annual limit was applied)	% increase if the \$750,000 was implemented
EE				
EE + Child (if applicable or other appropriate tier)				
EE + Spouse (if applicable or other appropriate tier)				
Family (if applicable or other appropriate tier)				

4. Indicate if the plan is fully-insured plan or a self-insured plan.

5. Indicate if this plan has Grandfather Status.

Please provide this information by 5:00 pm Monday November 22, 2010. We look forward to receiving your completed application. Thank you.

Sincerely,

Kathleen M. Scelzo, RN, MSN
Rules Compliance Division
Office of Insurance Oversight
Office of Consumer Information and Insurance Oversight (OCIIO)
Department of Health and Human Services
301-492-4121

From: Scelzo, Kathleen (HHS/OCIIO)
Sent: Friday, November 19, 2010 11:37 AM
To: 'helen.leek@darrigo.com'
Cc: Habit, Sandra (HHS/OCIIO)
Subject: D'Arrigo Brothers Field Health and Shed Plan Waiver Application

Importance: High

Attachments: DArrigo Brothers Shed Plan Waiver Application Questions.doc; DArrigo Brothers Field Plan Waiver Application Questions.doc

E John Culligan,

I left a message for you this morning alerting you about an e-mail you would receive from me concerning D'Arrigo Brothers application for Annual Limits Requirements of the PHS Act Section 2711 for the Field Health and Shed plans. Attached above are the documents that need to be completed in order to finalize the application process.

Many thanks for your assistance with this document.

Kathleen M. Scelzo, RN, MSN
Rules Compliance Division
Office of Insurance Oversight
Office of Consumer Information and Insurance Oversight (OCIIO)
Department of Health and Human Services
7501 Wisconsin Avenue
Bethesda, MD
301-492-4121

DARRIGO:000019

From: Botwinick, Alexandra (HHS/OCIIO)
Sent: Friday, December 17, 2010 3:15 PM
To: 'Helen Leek'
Cc: Habit, Sandra (HHS/OCIIO)
Subject: FW: D'Arrigo Bros. Approval Letter for Waiver of the Annual Limits Requirements 12-17-2010

Importance: High

Attachments: Updated Jan 1 Approval Letter .pdf; February 1 .pdf
Ms. Leek,

I apologize you were left off the forwarded e-mail. Please see the attached letters.

Please let me know if I can be of further assistance.

Sincerely,

Alexandra Botwinick

Office of Oversight
HHS/OCIIO
alexandra.botwinick@hhs.gov

From: Botwinick, Alexandra (HHS/OCIIO)
Sent: Friday, December 17, 2010 10:33 AM
To: 'Geoff Gega'
Cc: Habit, Sandra (HHS/OCIIO)
Subject: FW: D'Arrigo Bros. Approval Letter for Waiver of the Annual Limits Requirements 12-17-2010
Importance: High

Please see the attachments referenced in the previous e-mail.

Alexandra Botwinick

Office of Oversight
HHS/OCIIO
(301) 492-4177
alexandra.botwinick@hhs.gov

From: Botwinick, Alexandra (HHS/OCIIO)
Sent: Friday, December 17, 2010 8:09 AM
To: 'Geoff Gega'
Cc: 'Helen.Leek@darrigo.com'; Habit, Sandra (HHS/OCIIO)
Subject: D'Arrigo Bros. Approval Letter for Waiver of the Annual Limits Requirements 12-17-2010
Importance: High

Good Morning,

Thank you for submitting an application for a Waiver of the Annual Limits Requirements of the PHS Act

DARRIGO:000020

Section 2711 for **D'Arrigo Bros.** HHS has reviewed your application and made its determination. Please see the attached letter.

Please Note:

The January Approval Letter refers to the Field Health Plan.

The February Approval Letter refers to the Shed Plan.

Please confirm receipt of this letter by replying to this e-mail.

Please let me know if I can be of further assistance.

Sincerely,

Alexandra Botwinick

Office of Oversight

HHS/OCIIO

alexandra.botwinick@hhs.gov

From: Geoff Gega [mailto:GGega@CookBrown.com]

Sent: Thursday, December 16, 2010 8:09 PM

To: Botwinick, Alexandra (HHS/OCIIO)

Subject: application waiver

Alexandra, with respect to my earlier email re: D'Arrigo Bros., their supplemental information was actually submitted on November 23. Thank you in advance for a response at your earliest convenience.

Geoff Gega
CookBrown,LLP
714-542-1883

DARRIGO:000021

From: Botwinick, Alexandra (HHS/OCIIO)
Sent: Friday, December 17, 2010 10:33 AM
To: 'Geoff Gega'
Cc: Habit, Sandra (HHS/OCIIO)
Subject: FW: D'Arrigo Bros. Approval Letter for Waiver of the Annual Limits Requirements 12-17-2010

Importance: High

Attachments: Updated Jan 1 Approval Letter .pdf; February 1 .pdf
Please see the attachments referenced in the previous e-mail.

Alexandra Botwinick

Office of Oversight
HHS/OCIIO
(301) 492-4177
alexandra.botwinick@hhs.gov

From: Botwinick, Alexandra (HHS/OCIIO)
Sent: Friday, December 17, 2010 8:09 AM
To: 'Geoff Gega'
Cc: 'Helen.Leek@darrigo.com'; Habit, Sandra (HHS/OCIIO)
Subject: D'Arrigo Bros. Approval Letter for Waiver of the Annual Limits Requirements 12-17-2010
Importance: High

Good Morning,

Thank you for submitting an application for a Waiver of the Annual Limits Requirements of the PHS Act Section 2711 for **D'Arrigo Bros.** HHS has reviewed your application and made its determination. Please see the attached letter.

Please Note:
The January Approval Letter refers to the Field Health Plan.
The February Approval Letter refers to the Shed Plan.

Please confirm receipt of this letter by replying to this e-mail.

Please let me know if I can be of further assistance.

Sincerely,

Alexandra Botwinick

Office of Oversight
HHS/OCIIO
alexandra.botwinick@hhs.gov

DARRIGO:000022

From: Geoff Gega [mailto:GGega@CookBrown.com]
Sent: Thursday, December 16, 2010 8:09 PM
To: Botwinick, Alexandra (HHS/OCIIO)
Subject: application waiver

Alexandra, with respect to my earlier email re: D'Arrigo Bros., their supplemental information was actually submitted on November 23. Thank you in advance for a response at your earliest convenience.

Geoff Gega
CookBrown,LLP
714-542-1883

DARRIGO:000023

From: Botwinick, Alexandra (HHS/OCIIO)
Sent: Friday, December 17, 2010 8:09 AM
To: 'Geoff Gega'
Cc: 'Helen.Leek@darrigo.com'; Habit, Sandra (HHS/OCIIO)
Subject: D'Arrigo Bros. Approval Letter for Waiver of the Annual Limits Requirements 12-17-2010

Importance: High
Good Morning,

Thank you for submitting an application for a Waiver of the Annual Limits Requirements of the PHS Act Section 2711 for **D'Arrigo Bros.** HHS has reviewed your application and made its determination. Please see the attached letter.

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Please confirm receipt of this letter by replying to this e-mail.

Please let me know if I can be of further assistance.

Sincerely,

Alexandra Botwinick

Office of Oversight
HHS/OCIIO
alexandra.botwinick@hhs.gov

From: Geoff Gega [mailto:GGega@CookBrown.com]
Sent: Thursday, December 16, 2010 8:09 PM
To: Botwinick, Alexandra (HHS/OCIIO)
Subject: application waiver

Alexandra, with respect to my earlier email re: D'Arrigo Bros., their supplemental information was actually submitted on November 23. Thank you in advance for a response at your earliest convenience.

Geoff Gega
CookBrown,LLP
714-542-1883

DARRIGO:000024

From: Botwinick, Alexandra (HHS/OCIIO)
Sent: Tuesday, December 21, 2010 9:53 AM
To: Habit, Sandra (HHS/OCIIO)
Subject: FW: D'Arrigo Bros. Confirmation of Approval Letter for Waiver of the Annual Limits Requirements 12-17-2010

Alexandra Botwinick

Office of Oversight
HHS/OCIIO
(301) 492-4177
alexandra.botwinick@hhs.gov

From: Geoff Gega [mailto:GGega@CookBrown.com]
Sent: Friday, December 17, 2010 12:54 PM
To: Botwinick, Alexandra (HHS/OCIIO)
Subject: RE: D'Arrigo Bros. Approval Letter for Waiver of the Annual Limits Requirements 12-17-2010

Alexandra,

This confirms receipt of your email this a.m.
Thank you very much for the prompt response.

Sincerely,

Geoff Gega
CookBrown,LLP
714-542-1883

From: Botwinick, Alexandra (HHS/OCIIO) [mailto:Alexandra.Botwinick@hhs.gov]
Sent: Friday, December 17, 2010 5:09 AM
To: Geoff Gega
Cc: 'Helen.Leek@darrigo.com'; Habit, Sandra (HHS/OCIIO)
Subject: D'Arrigo Bros. Approval Letter for Waiver of the Annual Limits Requirements 12-17-2010
Importance: High

Good Morning,

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Please Note:

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DARRIGO:000025

Please confirm receipt of this letter by replying to this e-mail.

Please let me know if I can be of further assistance.

Sincerely,

Alexandra Botwinick

Office of Oversight

HHS/OCIIO

alexandra.botwinick@hhs.gov

From: Geoff Gega [mailto:GGega@CookBrown.com]

Sent: Thursday, December 16, 2010 8:09 PM

To: Botwinick, Alexandra (HHS/OCIIO)

Subject: application waiver

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Geoff Gega
CookBrown,LLP
714-542-1883

DARRIGO:000026

From: Marla Van Cleve [MVanCleve@darrigo.com]
Sent: Friday, November 12, 2010 12:07 PM
To: HHS HealthInsurance (HHS)
Subject: WAIVER

Attachments: Health Care Reform Package Final 11-11-10.pdf

Marla Van Cleve, SPHR
Payroll/HR Director
D'Arrigo Bros. Co., of California
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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Consumer Information and
Insurance Oversight
Washington, DC 20201

Date: November 2010

From: Steve Larsen, Director, Office of Oversight 

Subject: Application for Waiver of the Annual Limits Requirements of PHS Act Section 2711

Dear Waiver Applicant:

Section 2711(a)(2) of the Public Health Service Act (PHS Act), as added by the Patient Protection and Affordable Care Act (Affordable Care Act), requires the Secretary to impose restrictions on the imposition of annual limits on the dollar value of essential health benefits (as defined in section 1302(b) of the Affordable Care Act) for any participant or beneficiary in a new or existing group health plan or a new policy in the individual market for plan or policy years beginning on or after September 23, 2010 and prior to January 1, 2014. Specifically, the Secretary is granted the authority to determine what constitutes a "restricted annual limit" that can still be imposed under such plans or policies prior to January 1, 2014.

The interim final regulations published on June 28, 2010 (codified at 26 CFR § 54.9815-2719T; 29 CFR § 2590.715-2719; and 45 CFR § 147.126) established such restricted annual limits. The regulations also provided that these restricted annual limits may be waived by the Secretary of Health and Human Services (HHS) if compliance with the interim final regulations would result in a significant decrease in access to benefits or a significant increase in premiums. Pursuant to the regulation, HHS issued guidance on September 3 regarding the scope and process for applying for a waiver.

The Office of Consumer Information and Insurance Oversight, Office of Insurance Oversight received and processed your application for the plan(s) or policy(ies) year beginning February 1, 2011. We have determined that your application has met the criteria to obtain a waiver of the restricted annual limits requirements because compliance with the interim final regulations would result in a significant decrease in access to benefits for those currently covered by such plans or policies, or a significant increase in premiums paid by those covered by such plans or policies. To the extent you make any change to your benefit package after March 23, 2010, you must determine whether the change(s) will trigger loss of grandfathering status pursuant to 45 CFR § 147.140(g)(1).

An approval of your request for waiver of the restricted annual limits requirements granted under this process applies only to the annual limit(s) provided in your application for the plan or policy year beginning between September 23, 2010 and September 23, 2011. This waiver only applies to the annual limits requirements in Section 2711 of the ACA and does not apply to any other requirement of the Affordable Care Act, ERISA, the IRS Code or the PHS Act. Further, a group

health plan or health insurance issuer must reapply for any subsequent plan or policy year prior to January 1, 2014 when this waiver expires in accordance with future guidance from HHS. HHS may modify this waiver approval process memorandum and other relevant information.

If you have any questions regarding this letter, please email OCIIOversight@hhs.gov.