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Health Care Reform – Grandfathered Health Plan Regulations

As the details of the *Patient Protection and Affordable Care Act (PPACA)* emerge, we will update you, through the HR Benefits Authority, on selected provisions that affect employer-sponsored group health plans.

Specific Topics. In this issue, we take a closer look at the recently released interim final regulations regarding grandfathered health plans.

The Grandfather Rule. According to PPACA, group health plans in effect on March 23, 2010 (or "grandfathered health plans") are exempt from some health reforms, including the prohibition on cost sharing requirements for preventative care and immunizations, limitations on out-of-pocket expenses, limitations on deductibles, non-discrimination testing requirements for fully-insured plans, appeals process requirements, and certain reporting requirements.

PPACA does not address how group health plans maintain grandfathered status and continue to remain exempt from these limited provisions. It also does not explain the scope of changes that can be made to such plans without ceasing to be grandfathered. On June 14, 2010, the Department of Treasury, Department of Health and Human Services, and Department of Labor issued interim final regulations on these issues.

Maintaining Grandfathered Status. A grandfathered health plan is a self-funded or fully-insured group health plan that was in existence on March 23, 2010 (the date of enactment of PPACA). The grandfather rule applies separately to each benefit option offered under the plan (*e.g.,* various PPO, HMO, or high deductible health plan options). This means a plan with multiple benefit options may have both grandfathered benefit options and non-grandfathered benefit options.

In order to maintain grandfathered health plan status, a group health plan (or benefit option) must:

- **Continuously cover at least one individual.** A group health plan must continue to cover at least one individual (but not necessarily the same individual) for as long as it maintains grandfathered status.

- **Provide a statement regarding the plan's grandfathered status.** In any plan materials provided to participants or beneficiaries, a statement must be included that explains that the plan believes it is grandfathered. The regulations contain model language that may be used to satisfy this requirement.

- **Maintain records documenting the terms of the plan.** For as long as the plan remains grandfathered, a group health plan must maintain records documenting the terms of the plan in effect on March 23, 2010 and any other documents necessary to verify, explain, or clarify the plan's status as a grandfathered health plan (*e.g.,* plan documents, certificates of insurance, summary plan descriptions, documentation of premium costs and employee contribution rates).

Plan Changes*.* Group health plans will lose their grandfathered status if any impermissible changes are made after March 23, 2010.

Impermissible Changes. Compared to the terms in effect on March 23, 2010, grandfathered health plans will lose grandfathered status if they:

- **Change Insurance Companies or Insurance Policies.** A fully-insured group health plan that changes insurance carriers or enters into a new insurance policy after March 23, 2010 (because, for example, a previous policy is not being renewed or a new insured benefit option is being offered) will lose grandfathered status with respect to that insurance policy. The loss of grandfathered status will apply on a policy by policy basis (not to the plan as a whole) and does not apply to self-fund benefit options. This means self-funded plans, or benefit options, may change third party administrators without losing grandfathered status.

- **Eliminate all or substantially all benefits to diagnose or treat a particular condition**. For example, the plan eliminates the counseling sessions for mental health conditions, but not the prescription drugs for mental health conditions.

- **Raise the level of coinsurance charges.** For example, if as of March 23, 2010 a plan required participants to pay 20% coinsurance for inpatient surgery costs, the plan's grandfathered status will be lost if the level of coinsurance for inpatient surgery costs are later raised to 30%.

- **Raise copayment charges.** A plan may not increase copayments by more than (i) $5 (adjusted annually for medical inflation), or (ii) a percentage equal to medical inflation plus 15 percentage points. Raising a copayment from $10 to $40 for the 2011 plan year would, for example, cause a plan to lose its grandfathered status.

- **Raise deductibles, out-of-pocket limits, or other fixed amount cost-sharing requirements.** A plan may not increase these costs by more than the medical inflation rate plus 15 percentage points. For example, assuming the medical inflation rate is 5%, a plan may not raise the deductible for the 2011 plan year by more than 20% (5% + 15%) without losing its grandfathered status (*e.g.,* a $1,000 deductible could be raised to $1,200).

- **Reduce the employer contribution by more than 5%.** If an employer contributes toward the cost of coverage under the plan, the percentage of the employer contribution may not be reduced by more than 5%. For example, if the employer contribution on March 23, 2010 was 75% of the premiums, the employer contribution for the plan may never be reduced to less than 70% of the premiums.

- **Enter into a business restructuring for the purpose of covering new individuals under a grandfathered plan.** The principal purpose of a merger, acquisition, or similar business restructuring may not be to cover new individuals under a grandfathered health plan.

- **Transfer employees into the plan (or benefit option) without a bona fide employment-based reason.** A plan may not transfer employees from one grandfathered health plan (or benefit option) to another grandfathered health plan (or benefit option) without a bona fide employment-based reason.

- **Make certain changes to lifetime and annual benefits limits.** Plans that imposed lifetime or annual limits on March 23, 2010 may not later lower these limits. Similarly, plans that did not impose these limits as of March 23, 2010 may not begin imposing them.

A group health plan that made any of these impermissible changes after March 23, 2010 but before the regulations were issued may preserve its grandfathered status by reversing the changes before the first plan year beginning after September 23, 2010 (*i.e.,* January 1, 2011 for calendar year plans). Additionally, plan changes that were made in good faith compliance with PPACA prior to the date of the issuance of the interim final regulations (June 14, 2010) may be disregarded for enforcement purposes if the changes only modestly exceed the impermissible changes listed above.

Permissible Changes. Group health plans may maintain their grandfathered status when they make changes to their plans to comply with Federal or State legal requirements or permit current and new employees (and their dependents) to enroll after March 23, 2010.

Special Collectively Bargained Rules. Fully-insured collectively bargained group health plans in effect on March 23, 2010 are deemed to be grandfathered health plans until the date the last collective bargaining agreement that was in effect on March 23, 2010 terminates, if impermissible changes (other than changing insurance carriers or policies) are made during this time period. This rule does not apply to self-funded collectively bargained group health plans. Accordingly, a self-funded collectively bargained plan must satisfy the requirements listed above in order to maintain its grandfathered status.

Next Steps. Additional guidance on grandfathered health plans will likely be issued over the coming months. In the meantime, plan sponsors who choose to maintain grandfathered status will need to:

- Review any changes made to the plan since March 23, 2010 to determine if the changes will need to be reversed.

- Document the plan or policy terms in effect on March 23, 2010 and keep careful record of any other documents necessary to verify, explain, or clarify the plan's grandfathered status.

- Include the model grandfather statement in plan materials distributed to participants or beneficiaries.

We will continue to follow the legislation closely and provide you with updates as well as our analysis of what it means to you.

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