



CLIENT E-NEWSLETTER

SPECIAL BULLETIN

**Health Care Reform:
Carrier Changes Will Not Always Cause Loss of Grandfathered Status**

On November 15, 2010, the Departments of Health and Human Services, Labor, and Treasury released regulation amendments to provide a way group health plans can change insurance carriers or go from self-funded to insured without losing "grandfathered" status under the Patient Protection and Affordable Care Act ("PPACA").

By way of background, group health plans that were in effect on March 23, 2010, are exempt from complying with many of the PPACA's requirements. They are referred to as "grandfathered plans." On June 14, 2010, the three agencies released interim final regulations that contain rules about changes that would cause a group health plan to lose grandfathered status. Under those rules, a fully insured plan lost grandfathered status if it changed insurance carriers. A self-funded plan lost grandfathered status if it became fully insured.

The amended regulations change those rules, but only prospectively. They say a group health plan will not lose grandfathered status merely because the plan (or its sponsor) enters into a new insurance policy, provided the change is made on or after November 15, 2010, and the plan makes no other changes that would cause the plan to lose grandfathered status. The plan must give the new carrier documentation of the plan's terms (including benefits, cost sharing, employer contributions, and annual limits) before the change so the new carrier can determine whether a change causing loss of grandfathered health plan status has occurred.

If after March 23, 2010 and before November 15, 2010, a group health plan changed insurance carriers or if a self-funded plan became fully insured, then the plan will no longer be grandfathered.

The Department of Health and Human Services said the regulation changes were needed because the prior rules could increase the cost of coverage by giving carriers unfair leverage over plans and preventing plans from shopping for the best price. Some plans had to change carriers because the prior carrier left the market or discontinued a product.

The following are some other changes that will still cause a plan to lose grandfathered status.

Elimination of Benefits. Eliminating all or substantially all benefits to diagnose or treat a particular condition. This includes eliminating any necessary element to diagnose or treat a condition.

Increase in Percentage Cost Sharing. Any increase in a percentage cost sharing (such as a coinsurance requirement).

Increase in Deductibles and Out-of-Pocket Limits. Increasing any *fixed amount* cost-sharing requirement other than a copayment (such as a deductible or out-of-pocket limit) by more than medical inflation plus 15 percentage points measured from March 23, 2010.

Increase in Fixed Amount Copayments. Increasing the copayment for any service by more than the greater of: (1) \$5 adjusted for medical inflation or (2) medical inflation plus 15 percentage points, both measured from March 23, 2010.

Decrease in Employer Contribution Rate. Decreasing employer contribution rate towards the cost of any tier of coverage (e.g., single or family) for any class of similarly situated individuals by more than 5 percentage points below the contribution rate on March 23, 2010.

Annual Limits on the Dollar Value of all Benefits. A plan loses grandfathered status if:

- On March 23, 2010, it had no annual or lifetime limit on the dollar value of all benefits and it subsequently imposes an annual limit on the dollar value of benefits.
- On March 23, 2010, it had a lifetime limit on the dollar value of all benefits but no annual limit on the dollar value of all benefits and it then imposes an annual limit that is *more* than that lifetime limit.
- It had an annual limit on the dollar value of all benefits on March 23, 2010 and it thereafter decreases that limit.

Mergers and Acquisitions. If the principal purpose of a merger, acquisition, or similar business restructuring after 3/23/10 is to cover new individuals under a grandfathered plan, the plan will lose grandfathered status.

Eligibility Changes. Employees can move between coverage options at open enrollment without jeopardizing grandfathered status. Employees can also be transferred from one plan to another without jeopardizing grandfathered status if there is a bona fide employment-based reason for the transfer. However, a plan into which employees are transferred after 3/23/10 will *lose* grandfathered status under certain circumstances if there is no employment-based reason for the transfer other than to change the terms of coverage.

If you have any questions please call the attorney with whom you normally work.



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