Health Care Reform — Is Your Health Plan Coverage Grandfathered?

Group health plans (whether fully insured or self-insured) or individual health insurance coverage that was in effect on March 23, 2010 are considered “grandfathered” from many provisions of the recently enacted health care reform legislation (collectively, referred to as the Act). On June 17, 2010, the Department of Treasury, Department of Labor, and Department of Health and Human Services collectively issued interim final regulations providing guidance on what constitutes a grandfathered health plan and how to determine and maintain grandfathered status. The following will discuss grandfathering for group health plans only.

Definition of “Grandfathered” Health Plan

A group health plan is a “grandfathered” health plan under the Act with respect to individuals who were enrolled in the plan on March 23, 2010. A grandfathered health plan will not lose its grandfathered status merely because one or more (or even all) individuals enrolled on March 23, 2010 cease to be covered under the plan, so long as the plan continues to cover at least one person since March 23, 2010. This determination is made separately with respect to each benefit package made available under the plan, so that a plan may have benefit packages that are both grandfathered and non-grandfathered. For example, if an employer offers an HMO, PPO and fully insured indemnity plan, each of these benefit options is eligible for grandfathering separately.

Disclosure and Maintenance Requirements

The following steps must be taken in order to maintain the grandfathered status of a health plan:

- All plan materials provided to a participant or beneficiary describing the benefits provided under the plan must include a statement that the plan is a grandfathered health plan within the meaning of the Act, and provide contact information for questions and complaints (the regulations include model language that can be used to satisfy this disclosure requirement);
- The employer must maintain records documenting the terms of the plan that were in effect on March 23, 2010 and any other documents necessary to verify, explain or clarify its status as a grandfathered health plan under the Act; and
- The employer is responsible for ensuring that the records referred to above are available for examination by any agency official for as long as the plan or issuer takes the position that the plan is a grandfathered health plan under the Act.

“Employers should review their health plans to determine which, if any, plans are grandfathered. In addition, employers should determine whether any prospective or planned changes will cause plans to lose their grandfathered status.”
New Employees

New employees (whether newly hired or newly enrolled) and their families who enroll in a grandfathered health plan after March 23, 2010 will not adversely affect the plan’s grandfathered status. However, the regulations include two exceptions that are intended to (i) prevent grandfathered status from being bought and sold as a commodity in a merger, acquisition or similar business restructuring, and (ii) prevent grandfathered status from being retained by indirectly making changes (including the transfer of employees from one grandfathered plan to another) which would otherwise result in a loss of status if those changes had been made directly.

Special Rule for Collectively Bargained Insured Health Plans

Health insurance coverage maintained pursuant to one or more collective bargaining agreements (CBAs) ratified before March 23, 2010 will be considered a grandfathered health plan, at least, until the date on which the last CBA relating to the coverage that was in effect on March 23, 2010 terminates (even if there is a change in issuers or any other change described below during the period of the CBA). Note that this provision only applies to fully-insured health plans maintained pursuant to a CBA and not to self-insured plans. After the date on which the last CBA terminates, whether the insured health insurance coverage maintained pursuant to a CBA is grandfathered is determined according to the rules described below by generally comparing the terms of coverage on the date of the determination with the terms that were in effect on March 23, 2010.

Loss of Grandfathered Status

The regulations limit the changes that may be made under a health plan in order to maintain grandfathered health plan status. The following changes will cause a plan to lose its grandfathered health plan status:

- Changing health insurance carriers for fully insured plans, even if the coverage levels remain the same, as this would not be a group health plan that was in place as of March 23, 2010;
- The elimination of all or substantially all benefits to diagnose or treat a particular condition (or any necessary element to diagnose or treat a condition). For example, if a plan covers prescription drugs and counseling to treat a particular mental health condition, the elimination of counseling would result in loss of grandfathered status;
- Any increase, measured from March 23, 2010, in a percentage cost-sharing requirement, such as increasing a coinsurance requirement for in-patient surgery from 20 percent to 30 percent;
- Any increase in a fixed-amount cost-sharing requirement other than a copayment, such as a deductible or out-of-pocket limit, if the total percentage in the cost-sharing requirement (measured from March 23, 2010) exceeds the rate of medical inflation, plus fifteen percentage points;
- Any increase in a fixed copayment, if the total increase (measured from March 23, 2010) exceeds the greater of (i) the rate of medical inflation, plus fifteen percentage points, or (ii) $5.00, as adjusted for medical inflation;
- Any decrease in an employer contribution rate based on cost of coverage for any tier of similarly situated individuals that exceeds five percentage points below the contribution rate in effect on March 23, 2010; and
- Certain changes to overall lifetime and annual limits on the dollar value of benefits provided under the plan.

Under transitional rules, the following changes will not cause a plan to lose its grandfathered health status:

- Changes pursuant to a legally binding contract entered into on or before March 23, 2010;
• Changes to insurance contracts pursuant to a filing with a state insurance department filed on or before March 23, 2010; and
• Changes pursuant to written plan amendments adopted on or before March 23, 2010.

Next Steps

Employers should review their health plans to determine which, if any, plans are grandfathered. In addition, employers should determine whether any prospective or planned changes will cause plans to lose their grandfathered status. Employers must weigh the costs of maintaining grandfathered status against the benefits of making changes that could result in the loss of grandfathered status.

Health Care Reform Provisions Applicable to Grandfathered Plans

The preamble to the regulations also clarifies that health care reform mandates under the Act are not intended to apply to certain plans, such as self-insured retiree-only plans and plans that provide “excepted” benefits, as defined under HIPAA. Below is a summary of certain health care reform provisions of the Act that may be applicable to grandfathered health plans:

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<tr>
<th>Provision of the Act</th>
<th>Application to Grandfathered Health Plans</th>
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<tr>
<td>No lifetime limits.</td>
<td>Applicable for plan years beginning on or after September 30, 2010.</td>
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<tr>
<td>No annual limits.</td>
<td>Applicable for plan years beginning on or after September 30, 2010.</td>
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<td>Prohibition on rescissions.</td>
<td>Applicable for plan years beginning on or after September 30, 2010.</td>
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<td>Development and utilization of uniform explanation of</td>
<td>Applicable for plan years beginning on or after September 30, 2010.</td>
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<td>coverage documents and standardized definitions.</td>
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<td>Bringing down the cost of health care coverage (for</td>
<td>Applicable for plan years beginning on or after September 30, 2010.</td>
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<td>insured coverage only).</td>
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<tr>
<td>Extension of dependent coverage until age 26.</td>
<td>Applicable for plan years beginning before January 1, 2014, but only with respect to an adult child who is not eligible to enroll in an eligible employer-sponsored health plan other than a grandfathered health plan of a parent. Generally applicable for plan years beginning on or after January 1, 2014.</td>
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<tr>
<td>Prohibition of pre-existing condition exclusion or other discrimination based on health status.</td>
<td>Applicable for plan years beginning on or after January 1, 2014.</td>
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<tr>
<td>Prohibition on excessive waiting periods.</td>
<td>Applicable for plan years beginning on or after January 1, 2014.</td>
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Endnotes

1 The health care reform was adopted in two separate measures: the Patient Protection and Affordable Care Act, signed by President Obama on March 23, 2010, and the Health Care and Education Reconciliation Act of 2010, signed on March 30, 2010.
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