Grandfathered Plans

Health Care Reform made significant changes affecting private health insurance. In an effort to preserve the rights of consumers and employers to keep their current health insurance coverage, if they so choose, Health Care Reform included certain "grandfathering" relief provisions in the law. These provisions allow certain plans in effect on March 23, 2010, the date of enactment, to avoid the application of many of the new rules.

Grandfathered plans will be able to maintain this status indefinitely if plans only make permitted changes.

The three agencies charged with regulating Health Care Reform (Department of Treasury, Department of Health and Human Services, and Department of Labor) released interim final regulations that detail the changes that are permitted and are not permitted for plans seeking to maintain their grandfathered status.

In general, plan changes adopted before March 23, 2010, with an effective date after March 23 will not cause a loss of grandfathered status. If a plan did make a change since March 23, 2010, that would cause the plan to lose its grandfathered status under the new regulations, the plan may reverse those changes before the first plan year beginning on or after September 23, 2010 and preserve its grandfathered health plan status.

To maintain grandfathered status a plan must include a statement in any plan materials provided to participants that the plan believes it is a grandfathered plan. The regulation provides model disclosure language. A plan that has multiple benefit packages may have both grandfathered and non-grandfathered benefit packages; the rules apply separately to each benefit package.

Adding existing or new employees as new enrollees in a plan after March 23, 2010, will not affect the plan's grandfathered status. Changes to increase benefits, comply with legal requirements, or voluntarily adopt the health care reform consumer protections also will not adversely affect grandfathered health plan status.

If a group health plan or plan sponsor enters into a new policy after March 23, 2010, the new policy will not be grandfathered with respect to participants and beneficiaries in the plan, whether or not it contains any different provisions. Thus, for an insured plan to retain grandfathered status, the plan must renew the policy with the existing carrier.

Substantially reducing benefits or substantially shifting costs to participants will also cause a plan to lose grandfathered status. So, these changes will cause a plan to lose its status as a grandfathered plan:

- elimination of all or substantially all benefits to diagnose or treat a particular condition, even if that condition affects only a few covered individuals;
- any increase in an individual's percentage coinsurance requirement (e.g., increasing from 20 percent to 30 percent coinsurance);
- any increase in fixed-dollar cost-sharing (such as deductibles and out-of-pocket expense limits, but not co-payments) in excess of the rate of medical inflation (as defined in the regulations) since March 23, 2010, plus 15 percentage points;
- any increase in co-payments in excess of the greater of (1) the rate of medical inflation, plus 15 percentage

points, or (2) $5.00, as adjusted for medical inflation; and
- any decrease in the employer contribution towards the cost of any tier of coverage by more than 5 percent of its contribution rate in effect on March 23, 2010

The regulations invite comments on whether changes to plan structure (e.g., self-funded to insured status), provider networks, prescription drug formularies, and other plan design changes should be permitted without loss of grandfathered health plan status. The three federal agencies will issue additional guidance on grandfathered health plans over the coming months.

To recap, in broad terms, grandfathered plans are subject to some of the new provisions and are not subject to others.

Provisions Applicable to Grandfathered Plans

Grandfathered Plans must comply with the provisions regarding
- Eliminating lifetime maximum limits, eliminating certain annual limits,
- Eliminating rescissions of coverage,
- Eliminating preexisting condition exclusions for dependents under the age of 19,
- Provide coverage until age 26 for dependents that are not eligible to enroll in an employer-sponsored plan,

Beginning in 2014 for grandfathered plans the dependent coverage until age 26 applies to all dependents, preexisting condition exclusions are entirely eliminated as are enrollment waiting periods in excess of 90 days and annual limits on benefits are eliminated.

Provisions Not Applicable to Grandfathered Plans

Grandfathered plans will be exempt from complying with provisions regarding:
- Providing preventative care benefits without cost sharing
- Insured group health plans cannot discriminate in favor of the highly compensated
- Quality of care reporting requirements
- New claims appeal process and continued coverage during the appeal
- Choice of any participating primary care provider and coverage of out-of-network emergency services
- Prohibiting discrimination against individuals based on health status
- Coverage for approved clinical trials
- Limits on cost sharing

ACTION: While still subject to change, with this new regulatory guidance, employers are now in a better position to tentatively decide whether the limited grandfathered health plan exemption from the health care reform requirements will be worth the limitations on future changes in carriers or future changes in plan design.