

Automation Alley Newsletter

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New Proposed Regulations Explaining “Grandfathered” Status of Health Plan Under Patient Protection and Affordable Care Act

Overview

The Patient Protection and Affordable Care Act of 2010 (“PPACA”), as amended, imposes a number of new requirements on group and individual health plans, but permits certain “grandfathered” plans to delay or entirely avoid a portion of those requirements. On June 14, 2010, new proposed regulations were issued that further explain what a grandfathered plan is, and how grandfathered status can be lost.

What is a Grandfathered Plan?

Under PPACA, a grandfathered plan is generally a group or individual health plan, whether insured or self-insured, that was in existence on March 23, 2010, and that has not lost its grandfathered status. The new regulations provide that a single health plan or health insurance arrangement may include more than one benefit package, and each benefit package will be considered individually to determine whether it is grandfathered. Essentially, each policy, certificate or contract of insurance, and each self-insured schedule of benefits is treated separately for purposes of grandfathered status.

What Will Not Cause a Plan to Lose Grandfathered Status?

Grandfathered status will not be lost if a plan makes routine changes, such as:

- adds existing employees who are not yet enrolled;
- adds family members of existing employees;
- adds newly hired employees;
- adds new benefits;
- changes third-party administrators;
- voluntarily adopts new consumer protections under PPACA; or
- makes changes to comply with state or federal law.

What Will Cause a Plan to Lose Grandfathered Status?

The following changes will cause the loss of grandfathered status:

- change of insurer;
- elimination of substantially all benefits to diagnose or treat a particular condition, or of any necessary element to diagnose or treat a condition;
- adding a lifetime limit for the first time after March 23, 2010;
- adding an annual limit for the first time that is lower than the lifetime limit on March 23, 2010;
- decreasing an overall annual limit that existed on March 23, 2010;
- *any* increase in a percentage-based cost-sharing requirement (e.g., increasing co-insurance from 20% to 30%);
- increase in a fixed-amount cost-sharing requirement, *other than a co-payment*, of more than "medical inflation" (published by DOL) plus 15%, measured from March 23, 2010 (e.g., increasing annual deductible from \$500 to \$1,000);
- increase in a fixed-amount co-payment that exceeds the greater of (i) \$5 times "medical inflation," plus \$5, or (ii) "medical inflation" plus 15%, measured from March 23, 2010;
- reduction of the employer's contributions of more than 5% (e.g., increase of employee portion of premium from 15% to 25%);
- merger, acquisition, or similar business restructuring with the principal purpose of covering new individuals under the grandfathered plan;
- transfer of employees from one plan to another where the transferring plan would have lost its grandfathered status had it been amended to provide the coverage provided under the transferee plan -- unless there is a bona fide employment-based reason to transfer, (and a "bona fide employment-based reason" does not include a change designed to change the terms or cost of coverage);
- failure to provide a required notice of grandfathered plan status; or
- failure to maintain adequate records reflecting plan coverages and costs in effect on March 23, 2010.

Employers that made changes effective after March 23, 2010, may revoke or modify those changes before the first day of the first plan year beginning on or after September 23, 2010, to avoid the loss of grandfathered status.

What Should Employers Do Now?

Some employers may decide to make changes to their group health plan regardless of whether doing so will cause the loss of grandfathered status. Those wishing to preserve grandfathered status, however, should take the following steps:

- create permanent records of the coverage and cost structures in effect on March 23, 2010, and make that information available for inspection by participants, beneficiaries, state and federal agencies;
- each time an insurance renewal or other change in coverage takes place, analyze whether it will cause a loss of grandfathered status; and
- ensure that a notice of grandfathered status is prepared and distributed for each component of the group health plan that qualifies for grandfathered status, in a summary plan description or other communication.

If you have any employee benefit questions, please contact your regular Butzel Long attorney, a member of the Butzel Long Employee Benefits Practice Group, or the author of this e-mail news alert.

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