

## Health Care Reform: Considering Changes to Your Health Plan

07.19.2010

Kelsey N. H. Mayo  
Eugene S. Griggs

The Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (collectively the "Act") mandates a host of new requirements for employer-provided health plans. The Act did, however, exempt employer-provided health plans that were in place on March 23, 2010 from certain provisions of the Act so long as the plan meets certain requirements ("grandfathered plans").

To be a grandfathered plan, an employer-provided health plan must (1) be in place on March 23, 2010, (2) continuously provide coverage to one or more individuals, (3) avoid implementing any of the changes described below, (4) provide a notice in all materials describing plan benefits that, among other things, states that the employer believes the plan is a grandfathered plan, (5) maintain records documenting the plan's terms on March 23, 2010 (along with any other documents necessary to explain or verify its grandfathered status), and (6) make such records available upon request to participants, beneficiaries, and federal officials. Grandfathered plan status is determined separately for each benefit package (e.g., PPO, HMO); therefore, changes to one benefit package may result in that package losing grandfathered status while grandfathered status for another package is maintained.

Under final interim regulations issued on June 17, 2010, maintaining a plan's grandfathered status will come at the cost of flexibility in changing the plan's terms. When considering plan design changes, an employer should first identify whether the desired change will affect the plan's grandfathered status. If the plan's grandfathered status would be lost, then the employer should identify the benefits of maintaining the plan's grandfathered status and whether those benefits are significant enough to offset the benefits or cost savings that might otherwise result from implementing the desired plan changes.

### Plan Changes Triggering Loss of Grandfathered Status

Not all plan changes will cause the plan to lose its grandfathered status. A group health plan will no longer be considered a grandfathered health plan if the employer implements any one of the following changes:

- Eliminates all or substantially all benefits to diagnose or treat a particular condition;
- Increases a percentage cost-sharing requirement above the level on March 23, 2010;

- Increases a fixed amount cost sharing requirement (other than copayments) by a percentage (measured from March 23, 2010) by more than the sum of medical inflation and 15 percentage points;
- Increases copayments by an amount that exceeds the greater of: a percentage (measured from March 23, 2010) that is more than the sum of medical inflation plus 15 percentage points, or \$5 increased by medical inflation measured from March 23, 2010;
- Decreases the employer contribution rate by more than five percentage points below the contribution rate on March 23, 2010; or
- Changes the plan's annual limits in any of the following ways:

-The plan did not impose an overall annual or lifetime dollar limit on benefits as of March 23, 2010, and then imposes an overall annual limit on the dollar value of benefits;

-The plan imposed an overall lifetime dollar limit on benefits but no overall annual dollar limit on benefits as of March 23, 2010, and then adopts an overall annual dollar limit lower than the overall lifetime dollar limit in effect on March 23, 2010; or

-The plan imposed an overall annual dollar limit on benefits as of March 23, 2010, and then decreases the annual dollar limit.

### Benefits of Grandfathered Status

A plan may benefit from grandfathered status because, among other provisions, it will not have to comply with the following reforms:

- Cover preventive care services at 100% with no cost sharing;
- If dependent coverage is offered, cover children up to age 26 even though the child's employer makes coverage available to him or her (exemption ends in 2014);
- Provide coverage of certain routine patient costs for items and services furnished in connection with participation in a clinical trial, and comply with certain nondiscrimination requirements based on health status;
- Disclose certain enrollee information to the federal government and the state insurance commissioner, such as claims payment policies and practices;

p.s.

**Poyner Spruill**<sup>LLP</sup>  
ATTORNEYS AT LAW

- For insured plans, comply with nondiscrimination rules which prohibit discrimination in favor of highly compensated individuals;
- Revise appeals process to include an external appeal and the acceptance of evidence and testimony during internal appeal; and
- Eliminate the preauthorization or referral requirements for such services as OB/GYN, pediatrician, and emergency services.
- Cost Analysis of Savings from Plan Changes

The magnitude of the cost savings of maintaining the grandfathered status of a plan will depend greatly on the provisions that were in effect on March 23, 2010, and should be weighed against the cost savings associated with a proposed plan change. For example, if a health care plan currently requires employees to share a large amount of the cost for preventive care services, then the employer may see a significant cost savings by remaining a grandfathered plan since the employer will not have to incur the costs previously paid by the employee. In contrast, a plan that already covers preventative care services without a copayment (or with a low copayment) may see much lower cost savings from remaining a grandfathered plan.

Employers considering plan changes for their next plan year should begin this analysis now so that they have both the information and the time to decide whether to preserve the grandfathered status of their health plan. After performing this analysis, the employer may find that it is not cost effective or in the best interests of the employees to prevent making plan changes just to preserve the grandfathered status of their health plans. Should employers decide not to preserve that status, they will be faced with a fast approaching deadline to implement certain reforms for plan years beginning on or after September 23, 2010.

p.s.

POYNER SPRUILL publishes this newsletter to provide general information about significant legal developments. Because the facts in each situation may vary, the legal precedents noted herein may not be applicable to individual circumstances. © Poyner Spruill LLP 2010. All Rights Reserved.

**RALEIGH**

**CHARLOTTE**

**ROCKY MOUNT**

**SOUTHERN PINES**

**WWW.POYNERSPRUILL.COM**

301 Fayetteville St., Suite 1900, Raleigh, NC 27601/P.O. Box 1801, Raleigh, NC 27602-1801 P: 919.783.6400 F: 919.783.1075