

[Federal Agencies Ease Grandfathering Restrictions Under Health Care Reform Regulations](#)

November 19, 2010 by [Kelley Kaufman](#)

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As 2011 approaches, perhaps the biggest compliance issue for employers under the [Patient Protection and Affordable Care Act](#) ("PPACA") is whether it is advisable to retain "grandfathered" status for their health plan. Our [June 17, 2010 blog article](#) discusses the interim federal regulations governing grandfathered status and the "do's and don'ts" for plans that wish to maintain that status. One of the more controversial provisions in those regulations is the "change of carrier" provision. Under the interim regulations, a grandfathered health plan loses its grandfathered status if the sponsoring employer enters into a new policy, certificate, or contract of insurance after March 23, 2010. In other words, for most plans, changing carriers after March 23, 2010, would defeat grandfathered status – even if the benefits available through the new carrier did not change.

The change of carrier provision made little sense for several reasons. First, it presented an obstacle for employers who sought to obtain more competitive premium rates from other carriers to provide the same or better coverage. Secondly, it arguably gave additional leverage to insurance carriers when negotiating rate increases, since the loss of grandfathered status was a disincentive for employers to switch plans. Finally, the restriction did not seem to advance the regulatory goal of containing employee cost-sharing requirements.

Fortunately, the change in carrier provision is now a thing of the past. On November 17, 2010, the regulating agencies jointly issued an ["amendment" to the interim grandfather regulations](#) which effectively removed the change of carrier provision from the regulations. Importantly, the amendment does not apply retroactively, only prospectively for all such changes that are *effective* on or after November 15, 2010. For any plan that enters into a new agreement with a carrier, it is the date on which the coverage becomes effective – not the date on which the plan entered into the new contract or policy – that applies for purposes of this rule. Thus, this amendment will not apply to plans for which such changes became effective prior to November 15, 2010; those plans still lose their grandfather status under PPACA.

Prospectively, grandfathered group health plans may now change carriers without losing grandfathered status, provided the change does not involve a reduction of benefits or increase in cost-sharing that would defeat grandfathered status under the June 17 regulations. However, the amendment only applies to group health plans; it does not apply to policies issued on the individual market. Employers who are presently (or will soon be) considering a change in

carriers for their group health plan may now do so without fear of losing grandfathered status by virtue of the change.

If you have any questions regarding the recent amendment to the grandfathering rules or any other aspect of PPACA, please consult our [prior posts](#) or contact any of the attorneys in our [Labor and Employment Practice Group](#).

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