



Legal Alert: Changes to Grandfathered Plan Rules Announced

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The triple threat of federal agencies (Department of Labor, Department of Treasury, and Department of Health and Human Services) first published guidance in the form of interim final regulations on "grandfathered" health plans under the health care reform law (the "Affordable Care Act") on June 17, 2010. Since then the agencies have issued Frequently Asked Questions on September 20, 2010, October 8, 2010, October 12, 2010 and October 28, 2010, each containing responses to questions regarding the implementation of the Affordable Care Act, including clarifications on rules related to grandfathered plans. On November 15, 2010, the agencies released an amendment to the interim final regulations providing some relief to fully insured group health plans.

Amendment

In response to comments received on the interim final regulations, the agencies determined that an amendment is necessary to the grandfathered plan rules. Under the interim final regulations, a fully insured group health plan would lose its grandfathered status if it changed issuers or policies after March 23, 2010 regardless of whether or not the benefits or terms under the policy had actually changed in any significant way. The amendment to the interim final regulations removes this restriction and allows a group health plan or employer to enter into a new policy, certificate or contract of insurance without the plan losing its grandfathered status if certain conditions are met. This amendment, like the interim final regulations, applies separately to each benefit package under the health plan. However, it does not apply to individual policies.

In order for a fully insured group health plan to maintain its grandfathered status after a change in insurer or policy, the plan must not make any other changes that would result in a loss of grandfathered status under the interim final regulations (e.g. any increase in a percentage cost-sharing requirement such as coinsurance, etc. Please see our Legal Alert, "Anticipated Health Care Reform Grandfathered Plan Regulations Released," dated June 23, 2010, available on our web site at <http://www.fordharrison.com/shownews.aspx?Show=6300>, for a complete list of changes that will result in a loss of grandfathered status.) Additionally, the group health plan must provide any new insurance company with documentation of the prior health plan coverage sufficient to determine if any change in the new policy, certificate or contract of insurance is being made that would result in a loss of grandfathered status.

Effective Date

The amendment applies to group health insurance changes which become effective on or after November 15, 2010. Therefore, any change of insurer or policy that became effective prior to November 15, 2010 will not be subject to the amendment and would result in a loss of grandfathered status.

Employers' Bottom Line

This amendment is a welcome change for employers with a fully insured group health plan or with any fully insured benefit options under its health plan. It allows flexibility to change insurance carriers or insurance policies without the loss of grandfathered status as long as such changes do not result in one of the six prohibited changes under the interim final regulations for grandfathered health plans. Employers with fully insured plans who avoided making certain insurance policy changes (other than the 6 prohibited changes for grandfathered plans) that would reduce cost but result in a new policy being issued, may want to revisit those decisions in light of this amendment. Unfortunately, this amendment may have come too late, as a practical matter, for calendar year plans to make any changes for the 2011 plan year.

If you have any questions regarding this Alert, please contact the author, Daniel Sulton, dsulton@fordharrison.com, any member of Ford & Harrison's [Employee Benefits Practice Group](#), or the Ford & Harrison attorney with whom you usually work. You may also visit the [health care reform](#) section of the Ford & Harrison website, <http://www.fordharrison.com/HealthcareReform.aspx>, for more helpful resources and tools on health care reform.