

Grandfathering Rules Now Allow Change in Insurer

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If you think your health plan has lost grandfathered status because you've entered into a new insurance contract, you may be in for a pleasant surprise.

In response to comments received on the Grandfathering Regulations issued in mid-June, the DOL, HHS and IRS just issued an amendment that provides limited relief for plans that have entered into a new policy, contract or certificate of insurance after March 23, 2010. Under the amendment, fully-insured plans may switch insurers and self-funded plans may become fully-insured, without losing grandfathered status, if:

- The change in insurers was effective no earlier than November 15, 2010; and
- The new contract has not changed the structure of the plan to otherwise trigger a loss of grandfathering status.

No Retroactive Application

If a group health plan signed a contract with a new insurer before Nov. 15, 2010, but the contract was not effective until after that date, the plan can maintain grandfathered status. If, however, the effective date of the contract was before November 15, 2010, the former rule still applies and the plan will still be deemed to have lost its grandfathered status. The agencies have requested additional comments on this quirk in the effective dates. It is quite possible that this rule will be subject to additional clarification or modification.

Given the late date of the relief, it is unlikely that many employers who kept their current insurance contracts to maintain grandfathered status will be able to reopen negotiations with other insurers before the new plan year. Other employers who went ahead and entered into new contracts with insurers assumed that they already lost grandfathered status, and may have implemented plan changes that cemented that fate, notwithstanding the amendment to the rules.

Changes Must Remain Compliant with Grandfathering Regulations

Group health plans have an obligation to provide the new insurance carrier with sufficient details regarding the plan's cost-sharing, benefit structure and annual limits as of March 23, 2010, so that the insurer can verify that the terms of the new insurance policy do not cause the plan to otherwise run afoul of the grandfathering regulations. Presumably, this pushes the determination as to whether a plan is grandfathered to the insurer, not the plan sponsor.

Final Regulations Expected Soon

The DOL, HHS and IRS have stated that they are reviewing other public comments and expect to issue final grandfathering regulations soon. We will keep you apprised of any new developments in this area.

Contact April Goff or any other member of the Health Care Reform Task Force at Warner Norcross & Judd for advice on the new Grandfathering Regulation relief or any other questions you may have about Health Care Reform.