



Employer Services Advisory

APRIL 18, 2011

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New Guidance Issued on Preserving "Grandfathered" Health Plan Status

This is part of our series of alerts intended to help guide employers and plan sponsors through their new obligations under the recently-enacted health care reform laws and related guidance.

Grandfathered health plans are exempt from many of the new health care reform requirements. Thus, it is critical for employers and group health plan sponsors to determine whether their plans are grandfathered and what steps must be taken to preserve any grandfathered status. This month, the Departments of Labor, Health and Human Services, and the Treasury recently joined together to issue six additional Frequently Asked Questions (FAQs) that are intended to address issues that employers and plan sponsors have raised as they attempt to comply with health care reform. A copy of the FAQs can be found at: <http://www.dol.gov/ebsa/faqs/faq-aca6.html>

(1) Scope of Anti-Abuse Rule

Under the health care reform rules, if employees are transferred from one grandfathered plan or benefit package to another, this will cause the transferee plan/package to lose grandfathered status if making the same change within the transferor plan would have caused the loss of the transferor plan's grandfathered status, unless there was a bona fide employment-based reason to transfer the employees.

The FAQs provide the following non-exhaustive list of circumstances that will be considered "bona fide employment-based reasons":

- the issuer of the benefit package is exiting the market;
- the issuer no longer offers the product to the employer (e.g. minimum participant requirements are not met);
- low or declining participation makes it impractical to continue to offer the benefit package;
- a benefit package is eliminated from a multiemployer plan pursuant to a collective bargaining agreement; or
- a benefit package is eliminated for any reason, but multiple packages covering a significant portion of other employees remain available to the employees being transferred.

(2) Re-Classification of Drugs

If a drug is reclassified to a more expensive category solely because a generic alternative becomes available, then the increased cost is not considered an increase in plan costs that would cause loss of grandfathered status.

(3) Value-Based Insurance Design

Non-grandfathered plans are required under health care reform to provide no-cost coverage for certain preventive services. A prior FAQ provided that where a plan provided no-cost services in an in-network ambulatory surgery center, but imposed a copayment on the same service if performed in an in-network outpatient hospital services, the plan would still comply with the no-cost coverage requirements for preventive services if it waived the copayment for individuals for whom it would be medically inappropriate to have the preventive service provided in the ambulatory center. The new FAQ provides that a plan that did not originally require a co-payment in the above scenario could now impose a co-payment without losing grandfathered status.

(4 & 5) Effective Date of Loss of Grandfathered Status

If a plan amendment that would cause loss of grandfathered status is approved, but is not effective until a later date, the grandfathered status would not be lost until the effective date of the amendment (not the date it is approved). This would be the case, whether the effective date was mid-year or on the first day of a plan year.

(6) Decrease in Contributions Based on a Formula

Under the health care reform rules, grandfathered status is lost if an employer's contribution rate is reduced by more than 5% over the cost as of March 23, 2010. The FAQs make clear that if the employer's contribution is based on a fixed dollar formula (e.g. \$X per year, multiplied by years of service) and the overall cost of the coverage increases (so that the employer's share decreases as a percentage of the total cost), grandfathered status will not be lost. However, if the dollar amount paid by the employer, based on the fixed dollar formula, decreases by more than 5% (or any cap decreases by more than 5%), grandfathered status will be lost.

Please click [here](#) to view a list of the provisions that apply and do not apply to grandfathered plans, as well as examples of changes that may or may not jeopardize grandfathered plan status.

With a team of attorneys who are highly experienced in the employee benefits field, MLA can provide answers to questions and assistance in complying with these requirements.

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