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Affordable Care Act's Special Rules for
Grandfathered And Self-Insured Health Plans

The Affordable Care Act's ("ACA") mandates regarding health care plans, including the individual mandate, take effect with no change in schedule, despite the recent U.S. Treasury Department's decision to postpone employer penalties for one year, to January 1, 2015. By now, any employer that is covered by the Fair Labor Standards Act has either provided the required ACA notice to current employees or is preparing to do so by no later than October 1. The notice is available here.

Determining when and which ACA requirements apply to a specific health care plan hinges on a number of things, including the health care plan's effective date, whether the plan is fully-insured or self-insured, and the expiration date of a collective bargaining agreement if the plan is the subject of collective bargaining. This article covers the special ACA rules and effective dates for grandfathered and self-insured health care plans and offers guidance on how to determine whether your organization's health care plan is a grandfathered, self-insured, or fully-insured plan and, if so, which ACA requirements do and do not apply to the plan.

A health insurance plan that existed on March 23, 2010 enjoys ACA grandfathered status and is exempt, at least temporarily, from some (not all) ACA provisions. Some ACA provisions apply to all plans regardless of grandfathered status, as discussed below. Any plan that first took effect after March 23, 2010 and any plan offered through a health care exchange are ineligible for grandfathered status.

A plan can lose its grandfathered status in a number of different ways which are referred to here as Changes to Coverage. For example, if the plan eliminates all or substantially all benefits to diagnose or treat a particular condition (*e.g.*, a plan eliminates all benefits for cystic fibrosis), it loses grandfathered status. Implementing certain cost sharing increases such as an increase in the coinsurance percentage, the deductible or the out-of-pocket limits by more than 15 percent plus medical inflation, or an increase to co-payments by more than \$5 adjusted for medical inflation or 15 percent plus medical inflation, will jeopardize grandfathered status. Finally, increases in a participant's share of premiums by more than 5 percentage points, or certain changes in annual benefits limits put grandfathered status at risk. Changes to Coverage that affect grandfathered status are viewed on a cumulative basis, not an annual basis.

On the other hand, a plan will not lose its grandfathered status simply by increasing enrollment, or increasing premiums so long as a participant's share of the premium does not rise by more than 5 percentage points. Changes to comply with federal or state laws or changes in the third-party administrator also do not jeopardize grandfathered status. A change in insurers does not affect a plan's grandfathered status so long as Changes to Coverage do not exist under the new insurance provider's plan. Likewise, the entry of new employees into a plan, whether newly hired or newly enrolled after March 23, 2010, does not jeopardize the plan's grandfathered status.

A collectively bargained fully-insured plan maintains its grandfathered status until the expiration of the collective bargaining agreement ("CBA"). A collectively bargained fully-insured single employer plan also enjoys grandfathered status if the CBA was ratified before March 23, 2010.

A collectively bargained multi-employer health care plan could maintain grandfathered status as late as the date on which the last of the labor agreements relating to the coverage terminates. Any Change to Coverage implemented by the multi-employer plan after March 23, 2010 results in a loss of grandfathered status for all collectively bargained plans as of the date the Change to Coverage takes effect.

A self-insured plan is exempt from some ACA provisions. A self-insured health plan is an arrangement whereby the employer undertakes the funding of all benefits provided by the plan from the employer's general assets. A collectively bargained self-insured plan is not eligible for the same exemptions as a collectively bargained fully-insured plan. All self-insured plans, however, are exempt from some ACA provisions, as discussed below.

A grandfathered plan, but not a self-insured plan, is exempt from certain ACA requirements until the plan loses its grandfathered status, such as:

- Preventive Services – A grandfathered plan need not offer first-dollar coverage (no co-payment or deductible) for preventive services such as blood pressure, diabetes, and cholesterol tests; routine vaccines; flu and pneumonia shots; pregnancy counseling, screening, and vaccines; and well-baby and well-child visits;
- Patient Protections – A grandfathered plan may require a referral as a condition to a visit to an OB/GYN and require prior authorization or higher cost sharing for out-of-network emergency services; and
- Minimum Services Covered – Fully-insured group plans with 100 or fewer employees and group plans with more than 100 employees in the exchange must cover preventive and primary care, emergency, hospital, physician, outpatient, maternity and newborn care, pediatric (including dental and vision), medical/surgical care, prescription drugs, lab, and mental health and substance abuse, unless they are grandfathered plans.

Both grandfathered plans and self-insured plans are exempt from the following ACA requirements:

- Out-of-Pocket Maximums – Ordinarily, ACA requires group plans to limit out-of-pocket costs to $6,350 for single coverage and $12,700 for family coverage;

- Pricing – Ordinarily, ACA prohibits group plans with 100 or fewer employers and self-insured plans from medical underwriting and are exempt from the rating variation requirements based on age (3:1 ratio), tobacco use (1.5:1), family composition, or geography; and
- Deductibles – Ordinarily, ACA requires small group plans with 100 or fewer employees to limit deductibles to $2,000 for single coverage and $4,000 for family coverage.

All plans must implement the following ACA requirements on the normal ACA effective date (detailed below) regardless of the plan's grandfathered or self-insured status:

- Dependents Under Age 26 – Effective now, plans must allow adult children under age 26 to enroll in a parent's plan, regardless of the child's financial dependency, residence, student status or employment. Until December 31, 2013, however, grandfathered group plans are not required to provide coverage to dependents who are offered coverage by their employer regardless of the price or quality of the insurance.
- Plan Administrative Costs (Medical Loss Ratio) – Effective now, plans must provide rebates to plan participants if the percentage of premiums spent on medical services and activities to improve health care quality falls below 85 percent for plans with more than 100 employees or 80 percent for plans with 100 or fewer employees. *Self-insured plans are exempt.
- No Lifetime Or Annual Limits – Effective January 1, 2014, plans are prohibited from limiting the lifetime dollar value of benefits.
- Waiting Periods – Effective 2014 plans must reduce any waiting periods to 90 days or shorter.
- Automatic Enrollment – Anticipated to be effective in 2014, employers with more than 200 full-time employees must automatically enroll new full-time employees into an employer-sponsored plan unless they opt out of coverage.
- Employer Penalties – Effective January 1, 2015, a covered employer will be assessed penalties for failure to provide affordable coverage to 95% of its full-time employees and their dependents. For more detailed information on employer penalties, visit our firm's April 2013 Client Advisory.

Employers should weigh the costs and benefits of retaining grandfathered status. ACA's provisions for non-grandfathered plans, such as preventive services, out-of-pocket limits, and deductible limits, will result in increased costs for benefits. Additionally, self-insured plans will encounter challenges implementing and administering ACA's many new technical provisions. While grandfathered plans may be less costly than non-grandfathered plans, grandfathered status restricts plan sponsors from making specific changes to a plan design. An employer is strongly advised to carefully examine anticipated costs and potential administrative challenges before making any changes to its plan.

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If you have any questions or for more information about ACA and its impact on your organization or your employee benefit plans, please contact Patrick W. McGovern, Esq., pmcgovern@genovaburns.com, Gina M. Schneider, Esq., gmschneider@genovaburns.com, or Phillip M. Rofsky, Esq., profsky@genovaburns.com, in the Firm's Employee Benefits Practice Group.

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