Healthcare Alert - Interim Grandfather Rule Summary

June 15, 2010

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On June 14, 2010, the Departments of Treasury, Labor, and Health and Human Services published the Interim Final Rules for group health plans and health insurance coverage relating to status as a grandfathered health plan under the Patient Protection and Affordable Care Act (PPACA) with request for comments. Comments are due on or before 60 days after publication in the Federal Register.

Background on Grandfathered Plans

The PPACA was enacted on March 23, 2010; the Health Care and Education Reconciliation Act ("Reconciliation Act") was enacted on March 30, 2010. Section 1251 of the PPACA, as modified by section 10103 of the PPACA and section 2301 of the Reconciliation Act, provides that certain group health plans and health insurance coverage existing as of March 23, 2010 (the date of enactment of the PPACA), are subject only to certain insurance reform provisions of the Act. The statute and these interim final regulations refer to these plans and health insurance coverage as grandfathered health plans.

The following insurance reform provisions apply to grandfathered plans:

Insurance Reform Provisions	Application to Grandfathered Health Plans
§2704 Prohibition of preexisting condition exclusion or other discrimination based on health status	Applicable to grandfathered group health plans and group health insurance coverage. Not applicable to grandfathered individual health insurance
§2708 Prohibition on excessive waiting periods	Applicable
§2711 No lifetime or annual limits coverage.	Lifetime limits: Applicable Annual limits: Applicable to grandfathered group health plans and group health insurance coverage; not applicable to grandfathered individual health insurance coverage.
§2712 Prohibition on rescissions	Applicable

§2714 Extension of dependent coverage until age 26	Applicable
§2715 Development and utilization of uniform explanation of coverage documents and standardized definitions	Applicable
§2718 Bringing down cost of health care coverage (for insured coverage)	Applicable to insured grandfathered health plans

The following insurance reform provisions do not apply to grandfathered plans:

- Premium rating rules (§2701)
- Guaranteed availability of coverage (§2702)
- Guaranteed renewability of coverage (§2703)
- Discrimination based on health status (§2705)
- Coverage of Preventive Services (§2713)

According to the Departments, based on 2008-2009 data from the Kaiser Family Foundation and Health Research & Education Trust (HRET), an estimated 82% of large employers, and 70% of small employers, will maintain their grandfather status in 2011. By 2013, an estimated 55% of large employers, and 34% of small employers, will remain grandfathered plans.

Summary of Interim Final Rules on Grandfathered Health Plans

Definition of Grandfathered Plan

- Coverage provided by a group health plan, or a health insurance issuer, in which an individual was enrolled on March 23, 2010.
- A plan does not cease to be grandfathered because one or more (or even all) individuals enrolled on March 23, 2010 cease to be covered, provided that the plan has continuously covered someone since March 23, 2010.
- The rules apply separately to each benefit package made available under a group health plan or health insurance coverage. For example, a group health plan offers three benefit packages on March 23, 2010. The rules for what changes cause a plan to lose its grandfather status apply separately for each benefit package.
- Grandfathered health plan coverage includes coverage of family members.
- Grandfathered health plan coverage includes new employees, with several restrictions:
- Anti-abuse rules – If the principal purpose of a merger, acquisition, or similar business restructuring is to cover new individuals under a grandfathered health plan, the plan ceases to be a grandfathered health plan

- Changes in plan eligibility which cause a plan to lose grandfather status –
- Employees are transferred into a plan or health insurance coverage (transferee plan) from a plan or health insurance coverage under which the employees were covered on March 23, 2010 (transferor plan);
- Comparing the terms of the transferee plan with those of the transferor plan and treating the transferee plan as if it were an amendment of the transferor plan; and
- There is no bona fide employment-based reason to transfer the employees into the transferee plan.
- ** Note distinction between impermissible transfer of employees, and permissible, voluntary election of enrollees to change plans. **

Disclosure of Grandfather Status

- To maintain grandfather status, a plan or health insurance coverage must include a statement, in any plan materials provided to a participant or beneficiary describing benefits, that the plan or coverage believes it is a grandfathered plan and must provide contact information for questions or complaints.
- Excerpt from Model Language: "Being a grandfathered health plan means that your [plan or policy] may not include certain consumer protections of the Affordable Care Act that apply to other plans, for example, the requirement for the provision of preventive health services without any cost sharing."

Documentation of Plan/Policy Terms

- As long as a plan takes the position it is grandfathered, it must maintain records documenting terms of the plan as of March 23, 2010, and must make such records available for examination upon request.

Changes that Cause Plans to Lose Grandfathered Status

- Benefits
- Elimination of all or substantially all benefits to diagnose or treat a particular condition. This includes elimination of benefits for any necessary element to diagnose or treat a condition.
- For example, the terms of a plan provide benefits for a mental health condition, the treatment for which is a combination of counseling and prescription drugs. If the plan eliminates benefits for counseling, it loses its grandfather status.
- Cost-Sharing & Coinsurance
- *Coinsurance*
- Any increase in the level of coinsurance (e.g. increasing 20 percent of inpatient surgery to 30 percent).
- *Fixed-Amount Cost-Sharing*
- Other than co-payments, e.g. deductible or out-of-pocket limit:
- Increases which exceed the "maximum percentage increase".

- "Maximum percentage increase" defined as medical inflation (as of 3/23/10) + 15 percentage points.
- Medical inflation defined by reference to the overall medical care component of the CPI.
- Co-payments:
- Increases that exceed the greater of (i) the maximum percentage increase or (ii) $5 increased by medical inflation ($5 times medical inflation, plus $5).
- Employer Contributions
- When employer decreases its contribution towards the cost of any tier of coverage for any class of similarly situated individuals by more than 5 percentage points below the contribution rate as of March 23, 2010.
- "Contribution rate" defined as the amount of contributions made by an employer compared to the total cost of coverage, expressed as a percentage.
- Annual Limits
- If a plan did not have an annual limit on March 23, 2010, it loses its grandfather status if it adopts an annual limit.
- If a plan had a lifetime limit on March 23, 2010, but no annual limit, it loses its grandfather status if it adopts an annual limit at a dollar value that is lower than the dollar value of the lifetime limit.
- If a plan had an annual limit on March 23, 2010, it loses its grandfather status if it decreases the dollar value of the annual limit.
- Collective Bargaining Agreements
- In the case of health insurance coverage maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers that was ratified before March 23, 2010, the coverage is grandfathered health plan coverage at least until the date on which the last of the collective bargaining agreements relating to the coverage that was in effect on March 23, 2010 terminates.

Transitional Rules

Plans or health insurance issuers that amend terms based on contracts and agreements made prior to PPACA enactment do not lose their grandfathered status. Specifically, changes made pursuant to: (1) a legally binding contract entered into on or before March 23, 2010; (2) a filing on or before March 23, 2010 with a State insurance department; or (3) written amendments to a plan that were adopted on or before March 23, 2010.

Good Faith Compliance

Departments will take into account good-faith efforts to comply with a reasonable interpretation of the statutory requirements, and may disregard changes to plan and policy terms that only modestly exceed changes that would cause a plan to lose its grandfather status.

Grace Period

Employers and issuers may revoke or modify any changes made prior to publication of the interim final rule, where the

changes might otherwise cause a plan to lose its grandfathered status, if those changes are made effective by the new plan year on or after September 23, 2010.

Possible Additional Changes for Comment

- The Departments are seeking comments on whether the following changes should cause a plan to lose its grandfather status:
- Changes to plan structure; for example, switching from a health reimbursement arrangement to major medical coverage or from an insured product to a self-insured product.
- Changes to a network plan's provider network.
- Changes to a prescription drug formulary.
- Any other substantial changes to overall benefit design.

For a group health plan or group health insurance coverage that is a grandfathered health plan for plan years beginning before January 1, 2014, PHS Act section 2714 is applicable in the case of an adult child only if the adult child is not eligible for other employer-sponsored health plan coverage. The interim final regulations relating to PHS Act section 2714, published in 75 FR 27122 (May 13, 2010), and these interim final regulations clarify that, in the case of an adult child who is eligible for coverage under the employer-sponsored plans of both parents, neither parent's plan may exclude the adult child from coverage based on the fact that the adult child is eligible to enroll in the other parent's employer-sponsored plan.

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