Guidance Issued Regarding Grandfathered Status Of Group Health Plans

Insights
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On November 17, 2010, the Internal Revenue Service, Department of Labor and Department of Health and Human Services jointly issued an amendment to the interim final regulations regarding a health plan's status as a "grandfathered health plan" under the recent healthcare reform legislation.

Previously, one of the ways an employer group health plan could lose its grandfathered status was if the employer changed insurance companies. The amendment to the regulations allows all group health plans to switch insurance companies and still maintain their grandfathered status, so long as the structure of the coverage does not violate the other requirements for maintaining grandfathered status.

Background

The recent healthcare reform law, the Patient Protection and Affordable Healthcare Act, created a multitude of new requirements for group health plans ranging from the minimum level of benefits that must be provided to dictating which individuals must be offered coverage under a plan. Various provisions of the new law either do not apply at all or have extended compliance deadlines for what it refers to as "grandfathered plans." Grandfathered plans are those employer group health plans that were in existence on March 23, 2010.

A plan will lose its grandfathered plan status if changes are made to the plan's coverage that significantly decrease the benefits, materially increase cost sharing by participants in ways that might discourage covered individuals from seeking needed treatment, or substantially increase the cost of coverage paid by participants. Specifically, the following changes will cause a health plan to lose its grandfathered status:

- increasing non-fixed-amount cost-sharing requirements (such as increasing an employee's portion of all costs from 20% to 25%);
- increasing fixed-amount co-payments by an amount that exceeds the greater of 1) a percentage that is more than 15% plus the amount of medical inflation above the levels in effect on March 23, 2010 or 2) $5 increased by medical inflation above the levels in effect on March 23, 2010;
- increasing fixed-amount cost sharing payments other than co-payments (such as deductibles and out-of-pocket limits) by a percentage that is more than 15% plus the amount of medical inflation (set by the DOL using the overall medical care component of the Consumer Price Index

inflation (set by the DOL using the overall medical care component of the Consumer Price Index for All Urban Consumers, unadjusted) above the co-payment levels in effect on March 23, 2010; or

- decreasing the employer contribution rate by more than 5% below the contribution rate in effect on March 23, 2010. The "contribution rate" for this purpose is defined as the amount of contributions made by an employer compared to the total cost of coverage, expressed as a percentage. This rule applies to all tiers of coverage.

In addition, the elimination of all or substantially all benefits to diagnose or treat a particular condition will cause a plan to cease to be grandfathered. Prior to the amendment to the regulations, a group health plan could also lose its grandfathered status if it changed insurance companies.

Impact On Employers
This amendment allows employers with insured health plans greater flexibility in choosing their provider if they want to retain grandfathered status. According to the preamble to the amendment to the regulations, there had been a concern that the provision terminating grandfathered status upon any change in issuer would give insurance companies "undue and unfair leverage in negotiating the price of coverage renewals."

The amendment does not apply retroactively to changes to health insurance coverage made prior to November 17, 2010. For this purpose, the date that the new coverage becomes effective is the operative date. In other words, those plans that have already entered into a contract with a new insurance company that is effective prior to November 17, 2010, will still cease to be a grandfathered plan.

For more information contact any member of the Fisher Phillips Employee Benefits Practice Group.

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