

Amendment to Health Care Reform's Grandfather Regulations

November 22, 2010

Though final regulations have not yet been issued, the Departments of Treasury, Labor and Health and Human Services have issued an amendment to the Affordable Care Act's interim final rules/regulations regarding grandfather status. The amendment is effective prospectively.

The Affordable Care Act's Section 1251 provides that certain plans or coverage existing as of March 23, 2010 (the Affordable Care Act's enactment date) are "grandfathered" health plans and therefore subject to only certain (not all) Affordable Care Act provisions. Interim final rules/regulations were published June 17, 2010, and in paragraph (g)(1) specified certain plan or coverage changes that - if made - would cause a plan to no longer qualify for "grandfather" status (e.g. elimination of benefits, increase in percentage cost-sharing requirements, increase in co-pays, decrease in employer contribution rates, etc.).

The interim final rules/regulations also provided that - with certain exceptions made for collectively bargained plans in effect on March 23, 2010 - if an employer entered into a new policy, certificate, or contract of insurance after March 23, 2010, that new policy, certificate, or contract of insurance would lose "grandfather" status.

The Departments of Treasury, Labor and HHS have now amended the interim final rule/regulation to "allow a group health plan to change health insurance coverage (that is, to allow a group health plan to enter into a new policy, certificate, or contract of insurance) without ceasing to be a grandfathered health plan, provided that the plan continues to comply fully with the standards set forth in paragraph (g)(1)." "The modification provides that a group health plan does not cease to be grandfathered health plan coverage merely because the plan (or its sponsor) enters into a new policy, certificate, or contract of insurance after March 23, 2010 (for example, a plan enters into a contract with a new issuer or a new policy is issued with an existing issuer)." "Thus, a plan can retain its grandfather status if it changes its carrier, so long as it has not made any other changes that would revoke its status."

As a practical matter, the amended regulations will likely impact relatively few employers, as an employer still needs to meet all the other requirements referenced in (g)(1) to maintain grandfather status.

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