



UPDATE Employee Benefits and Compensation

JUNE 2010

Regulations Issued on Grandfat Health Plans Under the Patient Protection and Affordable Care Act

On June 14, 2010, the Internal Revenue Service (IRS), the Department of Labor's Employee Benefits Security Administration (EBSA), and the Department of Health and Human Services (HHS) issued interim final rules regarding grandfather health plans under the [Patient Protection and Affordable Care Act](#). The much-anticipated regulations affect insured and self-insured health plans existing as of March 23, 2010.

Background

The Patient Protection and Affordable Care Act, which became law on March 23, 2010, and the Health Care and Education Reconciliation Act of 2010, which became law on March 30, 2010 (together, the "Act"), implement sweeping changes to the American health care system. The new rules include a host of new mandates for health care plans, which apply to both insured plans and self-funded plans. Special grandfathering rules may, however, provide a broad exemption from some of these requirements, including: the application of the nondiscrimination rules to fully-insured medical plans; the preventive care mandates; and the requirement to extend dependent coverage to adult children up to age 26, regardless of other available employer-sponsored coverage.

A "grandfat health plan" is defined as any group health plan or individual coverage that was in effect on March 23, 2010. Grandfat status is not affected by a participant's reenrollment, enrollment of dependents, or enrollment of new employees and dependents if the plan permitted enrollments of these types on March 23, 2010.

Grandfat Plans Defined

The new regulations generally permit plan sponsors or issuers of grandfather health plans to make routine changes to their policies and maintain their grandfather status. These routine changes include: making cost adjustments to keep pace with medical inflation; adding new benefits; making modest adjustments to existing benefits; voluntarily adopting new consumer protections; or making changes to comply with state or other federal laws.

The regulations provide that a group health plan or health insurance coverage no longer will be considered a grandfather health plan if a plan sponsor or an issuer carries out one or more of the following:

- Eliminates all or substantially all benefits to diagnose or treat a particular condition
- Raises percentage cost-sharing requirements (such as coinsurance) above the level at

which it was on March 23, 2010

- Raises copayment charges, compared with those in effect on March 23, 2010, by an amount that exceeds the greater of \$5 (increased by medical inflation) or a percentage equal to medical inflation plus 15 percentage points
- Raises deductibles, compared with those required as of March 23, 2010, by a percentage equal to or greater than medical inflation plus 15 percentage points
- Lowers employer contributions by decreasing the employer contribution towards coverage by more than 5 percentage points from the rate on March 23, 2010
- Adds or tightens any annual dollar limit in place as of March 23, 2010
- Changes insurance companies (certain exceptions are provided for switching plan administrators and collective bargaining agreements)

To maintain a plan's status as a grandfather health plan, a plan or issuer must also maintain records documenting the terms of the plan or health insurance coverage that were in effect on March 23, 2010, and any other documents necessary to verify, explain, or clarify its status as a grandfather health plan. In addition, the plan or issuer must make such records available for examination. The rules also include model language for the requirement that plans disclose their grandfather status to eligible participants.

Employers and plan administrators may wish to review these regulations to determine their plan's grandfather status and their obligations under the Act. To receive more information on the grandfather provisions of the Act, and its effects on your benefit programs, please contact one of the following attorneys:

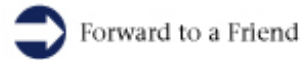
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