



Employee & Labor Relations

New Regulations Issued Affecting "Grandfathered" Health Plans

The Departments of Treasury, Labor, and Health and Human Services ("the Departments") have issued new rules for group health insurance coverage regarding "grandfathered" health plans under the Patient Protection and Affordable Care Act (PPACA). The intent of the regulations is to discourage employers who currently offer health care coverage to employees from cutting benefits or increasing employee costs. It is expected that the new rules will have a significant impact on small business owners, who tend to make changes to cost sharing, employer contributions, and health insurance issuers more frequently than larger employers.

I. What is a "Grandfathered" Health Plan?

The PPACA, which was enacted on March 23, 2010, requires minimum benefit levels for employer health care plans. However, group health plans and health insurance coverage existing as of March 23, 2010 are considered to be grandfathered. Generally speaking, this means that grandfathered plans can continue their normal operations, and are exempt from certain insurance reform provisions of the PPACA. For example, grandfathered plans do not have to provide essential benefits that limit employee out-of-pocket expenses, they do not have to provide the specified preventive care that other group health plans must provide, and they do not need to provide annual reports to the Secretary of Health and Human Services regarding health care quality and wellness programs.

II. Effect of the Regulations on Existing Health Plans

The new rules set the parameters within which employer health plans must operate if they wish to remain grandfathered. Plans will lose their grandfathered status if, among other things, they choose to change insurance providers, significantly cut benefits or increase out-of-pocket spending for employees. However, plans are permitted to make routine adjustments such as raising premiums to reasonably keep pace with health care costs, enroll new employees, allow participant renewal of coverage, and adding coverage for participants' dependents without jeopardizing their grandfathered status. Thus, employers may be forced to choose between switching to a new plan in order to keep costs down and maintaining their grandfathered status.

In addition, employer plans must take certain pro-active steps in order to ensure that they remain grandfathered. For example, the plan must disclose to participants (and beneficiaries) that it believes it is a grandfathered health plan within the meaning of the PPACA. The regulations provide model language for this disclosure. The plan must also maintain records and any other documents necessary to verify, explain, or clarify its status as a grandfathered health plan.

III. Grandfathered Plans Under Collective Bargaining Agreements

Health care plans provided under collective bargaining agreements ("CBA") in existence on March 23, 2010, are generally grandfathered. Any health care coverage under a CBA is considered grandfathered, even if a change is made to providers. Upon expiration of the CBA, the determination of whether health insurance coverage maintained pursuant to a collective bargaining agreement is considered grandfathered health plan coverage is made under the same rules that apply to other health plans.

IV. Effective Date and Grace Period

The regulations became effective on June 14, 2010. However, changes to terms that were based on contracts and agreements made prior to March 23, 2010 which do not become effective until after that date, may not necessarily cause the plan to lose its grandfathered status. For example, 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, would not effect a plan's grandfathered status.

Additionally, the Departments have recognized that some health insurance providers may have made changes to plans after March 23, 2010 but prior to June 14, 2010. In these cases, providers have two options. First, the Departments will take into account good-faith efforts to comply with a reasonable interpretation of the PPACA requirements, and may disregard changes to terms that "only modestly exceed" the prohibitions set forth in the new rules. Second, now that employers and insurers have been made aware of the rules relating to "grandfathered" plans, they will be given a grace period within which to revoke or modify any changes made prior to June 14, 2010 which otherwise would have caused the plan to lose its grandfathered status. Such changes must be made effective by the new plan year on or after September 23, 2010.

The new rules regarding grandfathered health care plans will obviously have an impact on grocers who offer health coverage to employees. Accordingly, grocers should examine their health plan documents in light of these rule changes in order to determine whether they want to remain grandfathered under the regulations.

For more information about this N.G.A. Member Advisory, please contact N.G.A.'s labor and employment counsel at EpsteinBeckerGreen, Kara Maciel, Esq. at kmaciel@ebglaw.com or (202) 861-5328.



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