

Compliance Alert

Rule Amended - Changing Carriers No Longer Causes Loss of Grandfathered Status

Changing Insurance Companies No Longer Causes Loss of Grandfathered Status

On Monday November 15th, the DOL, HHS and IRS (The Departments) jointly released an amendment to the interim regulations regarding grandfathered plans status (originally released June 17th, 2010) which changes the rules regarding the effect changing insurance companies has on a plan's grandfathered status under the Patient Protection and Affordable Care Act (PPACA). According to the new rule, fully insured plans can now change insurance carriers without affecting their grandfathered status.

According to the amendment: "...the Departments have determined it is appropriate to amend the interim final regulations 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..."

Change in rule applies only to carrier changes going forward, not those already made

In a twist that will be sure to cause some consternation among employers who have already changed carriers, the rule applies only to changes made after the date of the publication of the amendment (expected to be this week). In other words, if an employer with a fully-insured plan has already changed insurance carriers prior to today (November 15th, 2010), the plan will lose grandfathered status. However, if an employer changes carriers after the notice is published, for example a change effective on 1/1/2011, the plan will not lose grandfathered status.

The Departments state that: *"The amendment applies to such changes to group health insurance coverage that are effective on or after the date the amendment to the interim final regulations was made available for public inspection; the amendment does not apply retroactively to such changes to group health insurance coverage that were effective before this date. For this purpose, the date the new coverage becomes effective is the operative date, not the date a contract for a new policy, certificate or contract of insurance is entered into. Therefore, for example, if a plan enters into an agreement with an issuer on September 28, 2010 for a new policy to be effective on January 1, 2011, then January 1, 2011 is the date the new policy is effective and, therefore, the relevant date for purposes of determining the application of the amendment to the interim final regulations. If, however, the plan entered into an agreement with an issuer on July 1, 2010 for a new policy to be effective on September 1, 2010, then the amendment would not apply and the plan would cease to be a grandfathered health plan."*

Requirement to provide plan details to the new carrier

Another "interesting" aspect of the rule requires that to maintain grandfathered status, the employer must provide the new carrier with information regarding their previous benefits. The rule also states that the new carrier must require this information. The information can be a benefit summary or policy with enough information to determine if other changes are being made that would affect grandfathered status.

The amended rule states: *“To maintain status as a grandfathered health plan, a group health plan that enters into a new policy, certificate, or contract of insurance must provide to the new health insurance issuer (and the new health insurance issuer must require) documentation of plan terms (including benefits, cost sharing, employer contributions, and annual limits) under the prior health coverage sufficient to determine whether a change causing a cessation of grandfathered health plan status under [the regulations] has occurred.”*

Summary

The amendment to the rule comes too late for employers who have already changed carriers. However, the amendment will be welcome news for employers considering a carrier change who wish to retain grandfathered status.

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