National health care reform update
Grandfathered plans

August 2010

Overview

On June 17, 2010, the Department of Health and Human Services (HHS), the Department of Labor (DOL) and the Internal Revenue Service (IRS), jointly released their Interim Final Rule for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Plan under the Patient Protection and Affordable Care Act.

The Rule addresses what changes an insurer or plan sponsor may make to health insurance coverage or a group health plan without loss of its "grandfather" status under the Patient Protection and Affordable Care Act ("PPACA") and what administrative steps a plan must take to maintain grandfather status.

Why might a group want to be grandfathered?
A group may want to maintain grandfather status so as not to have to comply with certain provisions of the PPACA.

The basics

When does the Grandfathered Plan rule go into effect?
This rule is effective immediately.

Who does this apply to?
- ☒ Fully insured
- ☒ Self Insured
- ☐ Medicare

- ☐ Exceptions __e.g., QHDP

Who needs to know?
- ☒ Brokers
- ☒ Employers
- ☒ Members
- ☒ Providers
- ☐ Other _____

What you need to know

What is the definition of a grandfathered plan?
To be a grandfathered plan, the policy or group health plan must have had at least one individual enrolled in coverage on March 23, 2010, and the policy or plan must have continuously covered someone since March 23, 2010 (even if not the same individuals). Any new policy, certificate, or contract of insurance (versus renewal) issued after March 23, 2010 is not grandfathered.

Any insurance policy sold to new entities or individuals after March 23, 2010 will ***not*** be grandfathered, even if the product was offered in the group or individual market before March 23, 2010.

What are permissible changes that will not affect grandfathered status?
The following examples are of changes that, on their own, would not cause a plan to lose grandfather status (if these changes are combined with other types of changes, grandfather status could be impacted.):

- Changes to a policy or plan's premium.
- Changes required to comply with federal or state law.

- Changes to voluntarily comply with provisions of the PPACA or to increase benefits.
- Changes to a plan's third party administrator.

A final determination has not been made on the following:

- Changes to plan structure, *e.g.*, switching from a health reimbursement arrangement to major medical coverage, or from insured to self-funded coverage.
- Changes to a provider network.
- Changes to a prescription drug formulary.

What are changes that are not permissible and may cause a loss of grandfathered status?

The Rule provides that the following changes will cause a policy or plan to lose its grandfathered status:

- Elimination of a particular benefit.
- Increase in coinsurance.
- Increase in deductible or out-of-pocket maximum by more than medical inflation plus 15%, as measured from 3/23/10.
- Increase in copayment by more than the greater of: (1) $5 (adjusted for medical inflation), or (2) medical inflation plus 15%, as measured from 3/23/10.
- Decrease in employer contribution toward the cost of any tier of coverage (e.g., self or family) by more than 5 percent below the contribution rate on March 23, 2010.
- Changes in annual limits that place greater restrictions on benefits.
- A change in insurance carrier.

What legislative changes do grandfathered plans still have to comply with?

Grandfathered health plans must comply for plan years beginning on or after March 23, 2010, with the following:

- Uniform explanation of coverage documents.
- Reporting of medical loss ratio, and offering of premium rebates to enrollees if the plan did not meet specified medical loss ratio (rebate offers begin no later than January 1, 2011, and terminate on December 31, 2013).

Grandfathered health plans must comply for plan years beginning on or after September 23, 2010, with the following:

- Requirement to extend dependent coverage to age 26. Exception: For plan years beginning prior to January 1, 2014, grandfathered group health plans are only required to extend coverage if an adult dependent is not eligible to enroll in an employer-sponsored health plan.
- No annual lifetime limits on coverage for all plans. Exception: Grandfathered plans may be able to limit some annual benefits until January 1, 2014.
- No rescission of coverage for sickness or unintentional mistakes on application.
- Prohibition on coverage exclusions for pre-existing health conditions. For most enrollees, this provision will become effective for plan years beginning on or after January 1, 2014; however, for children under age 19, this provision will become effective for plan years beginning on or after September 23, 2010.

What provisions do grandfathered plans not have to comply with?

For plan years beginning on or after September 23, 2010:

- Requirement regarding preventive health services: Requires plans to cover preventive services with no cost -haring requirements, including certain immunizations and cancer screenings.
- Prohibition against discrimination in favor of highly compensated individuals.
- Requirement for reporting on quality features.
- Requirement regarding internal appeals: Extends certain ERISA protections regarding claims appeals to the individual market.
- Prohibitions on restrictions regarding health care providers and other patient protections:

- Prohibits limiting the types of health care providers that may be designated as primary care providers.
- Requires plans to cover emergency room services without prior authorization, without limits on coverage and without additional cost-sharing for emergency room services from non-network providers.
- Prohibits plans and insurers from requiring a referral in order for a female participant to obtain access to an obstetrician or gynecologist.

For plan years beginning on or after January 1, 2014:

- Prohibition against discrimination based on health status: Prohibits establishing eligibility rules based on certain health status factors.
- Prohibition against discrimination against health care providers acting within the scope of his or her provider's license.
- Comprehensive health insurance requirement: Limit on cost sharing and offer minimum coverage levels.
- Coverage requirement for clinical trials.

How does this impact Massachusetts law?

There is no impact on Massachusetts law.

How are FCHP plans affected?

Many of these provisions do not apply as a result of Massachusetts health care reform. FCHP's product portfolio is being evaluated to determine grandfathered status. More information will be shared as it is made available.

Need more details?

Interim final regulations implementing the rules for group health plans and health insurance coverage in the group and individual markets under provisions of the Patient Protection and Affordable Care Act regarding status as a grandfathered health plan are available through the U.S. Department of Health & Human Services at www.hhs.gov. Regulation

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