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Healthcare Reform - Significant Development for Grandfathered Plans

In June 2010, the DOL, HHS and IRS jointly issued interim final regulations to implement the grandfathered plan rule that relieves group health plans and health insurance policies from certain healthcare reform mandates if at least one participant was covered by the plan or policy on March 23, 2010. The rules provided that certain changes to group health plan coverage, including changes to insurance contracts or insurers, would cause a loss of grandfather status. A November 17, 2010 amendment to those regulations removed this limitation so that group health plans can change insurers without losing grandfathered status, provided that certain other changes are not made. This is a significant development for grandfathered plans because issuers no longer have unfair leverage in negotiating the price of coverage renewals with the sponsors.

The amendment provides that a group health plan, and any health insurance coverage offered in connection with the plan, will not cease to be grandfathered merely because the plan, or its sponsor, enters into a new insurance contract. However, grandfather status will only be retained if the new contract does not include other changes in the plan's design as originally identified in the regulations. The amendment was issued, in part, to put insured group health plans on a similar footing with self-insured plans (which were allowed to change TPAs without losing grandfathered status under the regulations). Insured plans now have comparable flexibility.

The amendment applies only to insurance contract changes that are effective on or after November 15, 2010, and does not apply retroactively. Consequently, the amendment applies to new coverage effective on or after November 15, 2010, but not to new coverage effective before November 15, 2010. The signature date of a new insurance contract has no bearing on the application of the amendment. For example, the amendment applies to a plan

agreement entered into with an insurer on September 28, 2010 for a new policy that will be effective on January 1, 2011.

To maintain grandfathered status, a group health plan that enters into a new insurance contract must provide to the new insurer (and the new insurer must require) documentation of plan terms, including benefits, cost-sharing, employer contributions, and annual limits, under the prior health coverage sufficient to determine whether any change has been made to the plan's design that would cause a loss of grandfather status. A copy of the prior policy or summary plan description is sufficient documentation for this purpose.

What This Means to You

The amendment is a welcome change for calendar year plans still contemplating a change in policies or insurers, or non-calendar year plans with new insurance contracts that have not yet taken effect if those plans wish to maintain grandfather status. Unfortunately, non-calendar plans with new insurance contracts that took effect before November 15, 2010 will lose grandfather status.

Contact Info

Please contact a member of the Employee Benefits and Executive Compensation practice group if you have questions or if we can assist in any way.

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