Lawley Benefits U

Regulations Issued on Grandfathered Health Plans

June 16, 2010

EXECUTIVE SUMMARY

The health care reform law passed earlier this year brings many changes to employers and health plans. The extent of the impact will depend, in part, on whether you maintained a health care plan on March 23, 2010, the date the primary legislation was enacted. If your company sponsored a plan on that date, it is considered a "grandfathered" plan. Grandfathered plans are exempt from certain health care reform requirements, such as no cost-sharing for preventive care and other patient protections.

On June 14, 2010, the Departments of Health and Human Services (HHS), Labor and Treasury issued regulations regarding grandfathered plans. Importantly, it clarifies what types of changes can be made to existing plans that will allow them to retain their "grandfathered" status.

SUMMARY OF THE REGULATIONS

The regulations essentially state that plans will lose their grandfathered status if they choose to significantly cut benefits or increase out-of-pocket spending for consumers. Losing grandfathered status means that a plan would have to comply with additional health care reform requirements, such as first-dollar coverage of recommended prevention services and patient protections such as guaranteed access to OB-GYNs and pediatricians.

Permitted Changes

Grandfathered health plans will be able to make routine changes to their policies and maintain their status. These routine changes include cost adjustments to keep pace with medical inflation, adding new benefits, making modest adjustments to existing benefits, voluntarily adopting new consumer protections under the new law, or making changes to comply with state or other federal laws. Premium changes are not taken into account when determining whether or not a plan is grandfathered.

Prohibited Changes

Plans will lose their grandfathered status if they choose to make significant changes that reduce benefits or increase costs to consumers. Specifically, making the following changes would cause a plan to lose its grandfathered status:

- *Significantly Reducing or Eliminating Benefits*. For example, if a plan decides to no longer cover care for people with diabetes, cystic fibrosis or HIV/AIDS.
- *Raising Co-Insurance Charges*. Typically, co-insurance requires a patient to pay a fixed percentage of a charge (for example, 20 percent of a hospital bill). Grandfathered plans cannot increase this percentage.
- *Significantly Raising Co-Payment Charges*. Frequently, plans require patients to pay a fixed-dollar amount for doctor's office visits and other services. Compared with the copayments in effect on March 23, 2010,

grandfathered plans will be able to increase those co-pays by no more than the greater of $5 (adjusted annually for medical inflation) or a percentage equal to medical inflation plus 15 percentage points. For example, if a plan raises its copayment from $30 to $50 over the next two years, it will lose its grandfathered status.

- *Significantly Raising Deductibles*. Many plans require patients to pay the first bills they receive each year (for example, the first $500, $1,000 or $1,500 a year). Compared with the deductible required as of March 23, 2010, grandfathered plans can only increase these deductibles by a percentage equal to medical inflation plus 15 percentage points. In recent years, medical costs have risen an average of 4-5 percent so this formula would allow deductibles to go up, for example, by 19-20 percent between 2010 and 2011, or by 23-25 percent between 2010 and 2012. For a family with a $1,000 annual deductible, this would mean if they had a hike of $190 or $200 from 2010 to 2011, their plan could then increase the deductible again by another $50 the following year.
- *Significantly Reducing Employer Contributions*. Many employers pay a portion of their employees' premium for insurance and this is usually deducted from their paychecks. Grandfathered plans cannot decrease the percent of premiums the employer pays by more than 5 percentage points (for example, decrease their own share and increase the workers' share of premium from 15% to 25%).
- *Adding or Tightening an Annual Limit on What the Insurer Pays*. Some insurers cap the amount that they will pay for covered services each year. If they want to retain their status as grandfathered plans, plans cannot tighten any annual dollar limit in place as of March 23, 2010. Moreover, plans that do not have an annual dollar limit cannot add a new one unless they are replacing a lifetime dollar limit with an annual dollar limit that is at least as high as the lifetime limit (which is more protective of high-cost enrollees).
- *Cannot Change Insurance Companies*. If an employer decides to buy insurance for its workers from a different insurance company, this new insurer will not be considered a grandfathered plan. This does not apply when employers that provide their own insurance to their workers switch plan administrators or to collective bargaining agreements.

Additional Requirements for Grandfathered Plans

The regulations also contain additional requirements to keep health plans from using the grandfather rule to avoid providing important consumer protections.

- *Disclosure*. To promote transparency, the regulations require a plan to disclose to consumers, every time it distributes plan materials describing the benefits provided, whether the plan believes that it is a grandfathered plan and therefore is not subject to some of the additional consumer protections of the health care reform law. This allows consumers to understand the benefits of staying in a grandfathered plan or switching to a new plan. The plan must also provide contact information for enrollees to have their questions and complaints addressed. The following model language published in the regulation can be used to satisfy this disclosure requirement:

  This [group health plan or health insurance issuer] believes this [plan or coverage] is a "grandfathered health plan" under the Patient Protection and Affordable Care Act (the Affordable Care Act). As permitted by the Affordable Care Act, a grandfathered health plan can preserve certain basic health coverage that was already in effect when that law was enacted. Being a grandfathered health plan means that your [plan or policy] may not include certain consumer protections of the Affordable Care Act that apply to other plans, for example, the requirement for the provision of preventive health services without any cost sharing. However, grandfathered health plans must comply with certain other consumer protections in the Affordable Care Act, for example, the elimination of lifetime limits on benefits.

  Questions regarding which protections apply and which protections do not apply to a grandfathered health plan and what might cause a plan to change from grandfathered health plan status can be directed to the plan administrator at [insert contact information]. [For ERISA plans, insert: You may also contact the Employee Benefits Security Administration, U.S. Department of Labor at 1-866-444-3272 or www.dol.gov/ebsa/healthreform. This website has a table summarizing which protections do and do not apply to grandfathered health plans.] [For individual market policies and nonfederal governmental plans, insert: You may also contact the U.S. Department of Health and Human Services at www.Healthreform.gov.].

- *Recordkeeping*. A plan or issuer must maintain and make available for inspection records documenting the terms of the plan or health insurance coverage that was in effect on March 23, 2010, and any other documents necessary to verify, explain, or clarify its status as a grandfathered health plan. Such documents could include intervening and current plan documents, health insurance policies, certificates or contracts of insurance, summary plan descriptions, documentation of premiums or the cost of coverage, and documentation of required employee contribution rates.
- *Plan Consolidation*. The regulations also provide that a plan's grandfathered status may be revoked if it forces consumers to switch to another grandfathered plan that, compared to the current plan, has less benefits or higher cost sharing as a means of avoiding new consumer protections. Grandfathered status may also be revoked if a plan is bought by or merges with another plan simply to avoid complying with the law.

Special Note on Collectively Bargained and Other Types of Health Plans

Fully-insured health plans subject to collective bargaining agreements will be able to maintain their grandfathered status until their agreement terminates. After that point, they are subject to the same rules as other health plans; in other words, they will lose their grandfathered status if they make any of the substantial changes described above. Retiree-only and "excepted health plans" such as dental plans, long-term care insurance, or Medigap, are exempt from the health care reform insurance reforms.

HEALTH REFORM PROVISIONS APPLICABLE TO GRANDFATHERED PLANS

Some provisions of healthcare reform are applicable to all health plans, regardless of grandfather status, (effective for plan years beginning on or after September 23, 2010 unless noted) including:

- Extension of dependent coverage for adult dependent children to age 26 unless the child is eligible to enroll in other employer-provided coverage (until 2014 when coverage must be extended regardless of other employer-provided coverage being available to the dependent)
- Elimination of lifetime limits on essential benefits
- Restrictions on annual limits for essential benefits (until 2014 when annual limits will be eliminated altogether)
- Elimination of pre-existing condition exclusions for enrollees under age 19 (in 2014 pre-existing condition exclusions are eliminated for all enrollees)
- Limits on recissions
- Reporting medical loss ratios (percentage of premiums spent on non-claim expenses) and rebates to participants if the ratios are more than the prescribed percentage
- Limits on waiting periods of no more than 90 days effective for plan years beginning on or after January 1, 2014
- Uniform explanation of coverage (benefit summary) in a format and content to be prescribed by HHS must be provided to participants and applicants beginning 24 months after enactment

HEALTH REFORM PROVISIONS NOT APPLICABLE TO GRANDFATHERED PLANS

- Coverage of preventive health services with no cost sharing
- Patient protections regarding emergency services, primary care provider designations, and preauthorization
- Nondiscrimination rules for fully-insured plans

- Quality of care reporting
- New appeals process
- Guaranteed issue and renewal of coverage
- Comprehensive health insurance coverage to include the essential benefits package
- Limits on cost sharing including limits on deductibles

For additional information, please visit the following website or contact your Lawley benefits consultant: www.healthreform.gov/newsroom/keeping_the_health_plan_you_have.html.

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