

# Health Care Reform Update

## Amendment to the Regulation on Grandfathered Health Plans

In response to concerns and comments from employers and the benefits community, the federal agencies administering health care reform, the Departments of the Treasury, Labor and Health and Human Services (“the Departments”), have removed a change in insurance carrier from the list of items that will cause a plan to lose grandfathered status. The change amends previously issued regulations which stated that if an employer entered into a new policy, certificate or contract of insurance after March 23, 2010, the coverage would lose its grandfathered status.

While the change will be welcomed by many employers, it will only apply to policy changes not yet made and leaves unanswered questions relating to its application to plans that have already undergone or are currently in open enrollment.

Briefly, in order for a group health plan to retain grandfathered status in the event of a carrier or policy change:

- The effective date of the policy must be on or after November 15, 2010;
- No other changes are made that would trigger a loss of grandfathered status under the regulations; and
- The employer must provide documentation to the new carrier regarding the coverage and benefits (including employer contributions) under the prior policy.

These requirements are discussed in more detail below.

### **WHAT PLANS DOES THIS APPLY TO?**

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This change only applies to group health plans. It does not apply in the individual market. A new policy, certificate or contract of insurance in the individual market issued after March 23, 2010 is non-grandfathered coverage.

Further, in order for a new policy, certificate or contract of insurance entered into by a group health plan to retain grandfathered status, it must be effective on or after November 15, 2010. The amendment does not apply retroactively to carrier or policy changes that were effective before November 15, 2010. For example, a new group health plan contract effective December 1, 2010 may retain its grandfathered status, assuming the requirements are satisfied. However, a new insurance contract for group health plan coverage that was effective September 1, 2010 is not eligible, and thus would remain a non-grandfathered plan.

### **WHAT CHANGES MAY CAUSE A PLAN TO LOSE GRANDFATHERED STATUS?**

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Apart from a change in a carrier, policy or certificate of insurance prior to November 15th, there are six ways a plan may lose grandfathered status.

Briefly stated, these six changes are:

1. Elimination of all or substantially all benefits to diagnose or treat a particular condition.
2. Increase in a percentage cost-sharing requirement (e.g., raising an individual's coinsurance requirement from 20% to 25%).
3. Increase in a deductible or out-of-pocket maximum by an amount that exceeds medical inflation plus 15 percentage points.
4. Increase in a copayment by an amount that exceeds medical inflation plus 15 percentage points (or, if greater, \$5 plus medical inflation).
5. Decrease in an employer's contribution rate towards the cost of coverage by more than 5 percentage points.
6. Imposition of annual limits on the dollar value of all benefits below specified amounts.

## **WHAT ARE THE DOCUMENTATION REQUIREMENTS?**

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In order to maintain status as a grandfathered plan, a group health plan that enters into a new contract, policy or certificate of insurance must provide the new health insurance carrier documentation of prior plan's terms (including benefits, cost sharing, employer contributions and annual limits) sufficient to determine whether any other change that would cause the plan to lose grandfathered status will occur (for example, a change in co-pay that causes a loss of grandfathered status). This documentation may include a copy of the policy or summary plan description (SPD). Insurance carriers will be required to collect this information.

The Departments are requesting comments on this amendment. For a copy of the rule and information on how to submit comments, see <http://www.dol.gov/ebsa/pdf/2010-28861-PI.pdf>. For a fact sheet, see <http://www.hhs.gov/ociio/regulations/grandfather/factsheet.html>.

## **WHAT IS THE IMPACT ON EMPLOYERS?**

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This change will allow employers that are making modest plan design changes for their upcoming renewals to seek the best pricing in the carrier marketplace without taking into account the financial and other impacts of losing grandfathered status. It may have limited impact, however, for many employers whose renewals occur in December and January and who have already made a decision to not change carriers in reliance on the old rules.

Employers who have lost grandfathered status due solely to a carrier change that went into effect before the new rules are effective (for example, October and November 2010 renewals) will not get relief from the rule change. While many of the changes required to be made by these plans (preventive care, appeals process and external review, patient protections, etc.) are already being met or are not considered onerous, the uncertainty of the application of the nondiscrimination rules under Code section 105(h) to these plans will be an issue that needs to be considered. It is possible that further guidance may offer future relief in this regard.

We will continue to keep you advised of future developments.



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601 Union St  
Suite 1000  
Seattle, WA 98101  
206.441.6300  
kpc.com

700 NE Multnomah  
Suite 1300  
Portland, OR 97232  
503.224.8390  
usinw.usi.biz

1255 Treat Boulevard  
Suite 300  
Walnut Creek, CA 94597  
925.472.6770  
usi.biz

2021 W March Lane  
3rd Floor  
Stockton, CA 95207  
209.957.6800  
usi.biz

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