



Employee Benefits **ALERT**

NOVEMBER 18, 2010

EMPLOYEE BENEFITS LAWYERS

JOHN BURKHARDTjohn.burkhardt@mcafeetaft.com
(918) 574-3001**JENNIFER CALLAHAN**jennifer.callahan@mcafeetaft.com
(405) 552-2225**BILL FREUDENRICH**bill.freudenrich@mcafeetaft.com
(918) 574-3013**J. DUDLEY HYDE**dudley.hyde@mcafeetaft.com
(405) 552-2229**BRANDON LONG**brandon.long@mcafeetaft.com
(405) 552-2328**RICHARD NIX**richard.nix@mcafeetaft.com
(405) 552-2219**JOHN PAPAHRONIS**john.papahronis@mcafeetaft.com
(405) 552-2231**ALISON MCCALLA PATEL**alison.patel@mcafeetaft.com
(405) 552-2332**JIM PRINCE**jim.prince@mcafeetaft.com
(405) 552-2309**MARK SPENCER**mark.spencer@mcafeetaft.com
(405) 552-2368**ELIZABETH SCOTT WOOD**elizabeth.wood@mcafeetaft.com
(405) 552-2270

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Amendment to regulations will allow some plans to change insurance carriers without losing grandfathered status

On November 15, 2010, the U.S. Departments of Labor, Treasury and Health and Human Services released an amendment to the previously issued interim final regulations (the "Interim Regulations") concerning the "grandfathered plan" provisions of the Patient Protection and Affordable Care Act (PPACA). The departments also issued a fact sheet along with the amendment.

As we have previously reported, certain group health plans (referred to as "Grandfathered Plans") which existed on March 23, 2010, are not required to comply with certain requirements (for example, the requirement for coverage of preventive care at no cost to the participant and the requirement that insured plans comply with nondiscrimination requirements). The Interim Regulations provided that Grandfathered Plans will lose their status if "they choose to make significant changes that reduce benefits or increase costs to consumers." Among the changes which the Interim Regulations identified as causing the loss of Grandfathered Plan status was changing insurance carriers for fully insured plans.

The new amendment provides that an insured group health plan does not lose grandfathered status merely by changing issuers or insurance contracts so long as the change in issuers and/or contracts complies with the other prior rules regarding grandfathered plan status.

Plan sponsors that are considering changing issuers or insurance contracts should ensure that all benefits provided under the contract in effect on March 23, 2010, remain in effect following any such change and that the cost-sharing features associated with the new insurance contract and/or issuer are the same as the prior contract.

The amendment applies to such changes to group health insurance coverage that are effective on or after November 15, 2010, the date the amendment to the Interim Regulations was made available for public inspection. According to the departments, the amendment does not apply retroactively to such changes to group health insurance coverage that were effective before this date. The amendment explains that 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.

For additional information, please contact any member of **McAfee & Taft's Employee Benefits Practice Group**.