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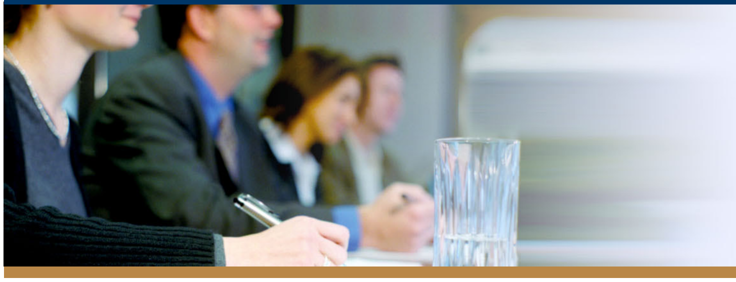

Employee Benefits ALERT

JUNE 24, 2010

Health Care Reform:

Important regulations issued on grandfathered plans

On June 14, 2010, the Departments of Labor, Treasury and Health and Human Services jointly issued interim final regulations addressing the "grandfathered plan" provisions under the Patient Protection and Affordable Care Act (PPACA). PPACA generally provides that group health plans that were in existence on the March 23, 2010 enactment date of PPACA are grandfathered from (not required to comply with) some, but not all, of PPACA's health care reform requirements. The new regulations are significant in that they clarify what types of changes can be made to existing plans that will allow them to retain their grandfathered status.

What causes an existing group health plan to lose grandfathered status?

Group health plans will generally lose their grandfathered status if significant changes are made that reduce benefits or increase costs to participants. Specifically, the following changes would cause a plan to lose its grandfathered status:

- **The employer obtains a new policy, certificate or contract of insurance for the plan.** This does not apply to a change in stop-loss insurance coverage for a self-insured medical plan.
- **Elimination of benefits for a particular medical condition.** This rule applies regardless of how discrete the condition is and how many people are affected. Further, the rule applies to the elimination of a necessary element to diagnose or treat a medical condition.
- **Increase of coinsurance percentage to any extent.** Typically, co-insurance requires a participant to pay a fixed percentage of a charge (for example, 20% of a hospital bill). Any change of this percentage will result in loss of grandfathered status.
- **Significant increase of deductible or out of pocket maximums.** Any increase in the deductible or out of pocket maximum from the March 23, 2010 amounts by more than 15% plus the amount of medical inflation from March 23, 2010 will cause a loss of grandfathered plan status.
- **Significant increase of co-payment charges.** Frequently, plans require participants to pay a fixed-dollar amount (co-payment) for doctor visits and other medical services. If the amount of a co-payment charge is increased over the March 23, 2010 charge by more than the greater of $5 (adjusted annually for medical inflation) or a percentage equal to medical inflation plus 15%, the plan will lose grandfathered status.
- **Significant reduction in employer contributions.** Many employers pay a portion of their employees' premium for medical coverage. If this contribution rate is decreased from the March 23, 1010 amount by more than 5%, the plan will lose grandfathered status.
- **Changes in annual limits.** A plan loses grandfathered status if the plan imposes a new annual limit or reduces an existing annual limit for all benefits under the plan.

What changes can be made without losing grandfathered plan status?

The following changes do not cause a plan to lose grandfathered status:

- **Changes to the third party administrator (TPA).**
- **Changes to comply with federal or state law.**
- **Voluntary plan changes to comply with PPACA.**

Transition rules

The Regulations provide two transitions rules:

- Changes that are effective after March 23, 2010, but were adopted by March 23, 2010, pursuant to a legally binding contract, insurance policy or written amendment to a plan will not cause a loss of grandfathered status. These changes are considered to be in effect on March 23, 2010.
- Changes made after March 23, 2010, but prior to June 14, 2010, that would otherwise violate the Regulations will not cause the loss of grandfathered status if the changes

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are revoked by the first day of the first plan year beginning on or after September 23, 2010 (i.e., January 1, 2011 for calendar year plans), and the plan as modified would not otherwise fail the grandfather requirements.

Recordkeeping and notice requirements for grandfathered plans

Plan sponsors maintaining grandfathered plans must maintain records documenting the terms of the plan in connection with the coverage in effect on March 23, 2010, and any other documents necessary to verify, explain or clarify the plan's status as a grandfathered plan. These records must be made available upon request. The summary plan description, enrollment guide and any other plan materials of a grandfathered plan must also disclose to participants that the plan is a grandfathered plan.

What are the implications of losing grandfathered status?

If a group health plan loses grandfathered status, it will become subject to the following PPACA health care reform requirements:

- No cost sharing for immunization or preventive care.
- Nondiscrimination rules will apply to insured group health plans. These rules prohibit discrimination in favor of highly compensated individuals and already apply to all self-insured group health plans.
- Must allow individuals to choose pediatrician for child's primary care physician.
- Must allow females to choose gynecologist or obstetrician without referral.
- Must provide internal appeals and external review process.
- Must allow emergency services without preauthorization and treat as in-network.

Next steps for plan sponsors

We recommend that plan sponsors take the following steps:

- Plan sponsors should evaluate their current plan to determine whether the benefits of maintaining grandfathered plan status outweigh the restrictions on plan design and cost-sharing changes imposed by the Regulations.
- Plan sponsors who decide to retain the grandfathered status of their group health plan should carefully document the plan in effect on the grandfather date (March 23, 2010) and include the grandfather statement in plan materials distributed to participants.

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

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