The Advantages of Having "Grandfathered" Health Plan Status Under PPACA (And How to Lose That Status)

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The Patient Protection and Affordable Care Act ("PPACA" or the "Act") is by far the most wide-reaching new law governing employee benefits since the Employee Retirement Income Security Act ("ERISA") was passed in 1974. During the legislative process that led to passage of the sweeping health care reform legislation, it was proposed that plans already in existence on the date of passage be "grandfathered," or exempted, from the Act's requirements. The concept of "grandfathering" is included in the Act; however, grandfathered plans are only exempt from some of the Act's requirements. This article briefly discusses the meaning and advantages of grandfathered status and the recent interim federal regulations governing the maintenance of grandfathered status.

What is a grandfathered plan under PPACA?

A grandfathered plan is a health plan that was in existence on the date PPACA was passed – March 23, 2010. Under recently issued interim federal regulations, a plan must have "continuously covered someone since March 23, 2010" in order to be grandfathered.

What are the benefits to an employer of having a grandfathered health plan?

1. Grandfathered plans are exempt from some, but not all, of PPACA's requirements. For example, grandfathered plans are exempt from: the Act's mandate for plans to offer certain free preventive health services;
2. The extension of rules prohibiting discrimination in favor of highly compensated employees to insured plans;
3. The establishment of an external review process for benefit claim appeals;
4. The prohibition against pre-authorization requirements for OB/GYN and emergency services;
5. New Department of Health and Human Services ("HHS") reporting requirements regarding plan efforts to improve participant health, safety and wellness;
6. New HHS reporting requirements regarding claim payment policies, enrollment/disenrollment, claim denials and cost sharing; and
7. Certain cost-sharing restrictions. In addition, grandfathered plans have delayed compliance deadlines for several of the Act's requirements (e.g., restrictions on annual benefit limits).

Is it possible to lose grandfathered plan status?

Although a health plan can avoid having to comply with a number of PPACA requirements by maintaining grandfathered status, that status can be lost. On June 11, 2010, the Internal Revenue Service, HHS and the Department of Labor jointly issued "interim final rules" outlining the ways in which a grandfathered plan can lose its status. These regulations are extremely restrictive and are likely to trigger significant "pushback" from the employer community. It is entirely possible that the interim rules will be overhauled before being issued in final form. However, for present purposes, the interim rules are the only formal guidance available on this point.

The interim rules state that an employer's plan loses grandfathered status if the employer enters into a new insurance policy, certificate, or contract of insurance after March 23, 2010. In addition, under the interim rules, a plan loses grandfathered status if:

1. All or substantially all benefits to diagnose or treat a particular condition are eliminated;
2. Percentage cost-sharing requirements (e.g., coinsurance) are increased by any amount after March 23, 2010;
3. Fixed-amount cost-sharing requirements other than copayments (e.g., deductibles/out-of-pocket limits) exceed "maximum percentage increases" as defined in the regulations;
4. Fixed amount copayments are increased at a rate exceeding the "maximum percentage increase" or ($5 x "medical inflation") + $5; or
5. The employer decreases its contribution rate towards the cost of any tier of coverage by more than 5 percent.

According to the interim rules, a plan does not lose grandfathered status if:

1. The plan is changed pursuant to a binding contract entered into before March 23, 2010;
2. The changes were in accordance with a filing with a State Insurance Department dated before March 23, 2010;
3. The changes were in accordance with a plan amendment dated before March 23, 2010; or
4. Disqualifying changes that were made after March 23, 2010 and before issuance of regulations are revoked on or before the first day of the first plan year beginning on or after September 23, 2010.

What about collectively bargained plans?

Special rules apply to fully-insured plans that are collectively bargained. Generally speaking, such plans that were in existence on March 23, 2010 will remain grandfathered until the expiration of the governing collective bargaining agreement. After that point, these plans are subject to the same rules regarding grandfathered status that apply to all other plans.

Under the interim final rules, grandfathered health plans cannot maintain that status unless they adhere to significant restrictions regarding alteration of benefits and cost-sharing requirements. Companies that offer grandfathered health plans will need to immediately start weighing the impact of these restrictions against the added administrative burden that comes with losing grandfathered status. Given the uncertainty surrounding the details of many PPACA requirements (even the recent grandfathering rules may be significantly changed before finalized) this is presently not an easy balance to strike.

If you have any specific questions regarding health care reform, or the Act's impact on your health plans, contact any of the attorneys in the McNees Wallace and Nurick LLC Labor and Employment Group or the Employee Benefits Group for assistance.