

## **The Patient Protection and Affordable Care Act and Employers: Is Your Plan Affected and What Changes Will Your Business Have to Make?**

### **UPDATE: Amendment Issued Regarding Fully-Insured Grandfathered Plans**

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Effective November 15, 2010, the Department of Labor and Department of Health and Human Services and Department of Treasury ("Departments") jointly issued an amendment loosening the interim final regulations, issued on June 17, 2010, regarding grandfathered status of fully-insured group health plans under the Patient Protection and Affordable Care Act, as modified by the Reconciliation Act and Manager's Amendment (collectively "the Act"). This amendment updates Part I: *New and Grandfathered Plans* of our five part *The Patient Protection and Affordable Care Act and Employers: Is Your Plan Affected? What Changes Will Your Business Have to Make?* series.

Grandfathered plans are those group health plans that were in effect on March 23, 2010, and are continuously enrolling employees. Grandfathered plans are exempt from many of the Act's requirements, however, such status can be lost due to plan changes as described in *Part I: New and Grandfathered Plans*.

Though now, under the new amendment, a grandfathered plan can maintain grandfathered status even if the employer changes insurance companies (*i.e.* policy, certificate, or contract of insurance) of its fully-insured plan. This amendment is in part meant to avoid any unfair price advantage an insurance company may have had

regarding contract renewals, or involuntarily loss of grandfathered status due to an insurer leaving the market. This change is also consistent with the interim final regulations that originally and still allow a self-insured group health plan to change its third-party administrator without losing grandfathered status.

However, this amendment is not retroactive meaning that employers who changed insurance companies before and whose new contract is effective prior to November 15, 2010, have lost grandfathered status based on that change. Comments on the amended interim final regulations are welcomed by the Departments, as this amendment was made in response to comments received.

A plan that maintains grandfathered status under the Act must continue to disclose its status to participants or beneficiaries in all plan materials. A sample notice is provided by the Department of Labor at [www.dol.gov/ebsa/grandfatherregmodelnotice.doc](http://www.dol.gov/ebsa/grandfatherregmodelnotice.doc).

Ober|Kaler will continue its updates on the Act as new guidance and regulations are published.

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