

Legislative Brief

Health Care Reform: Grandfathered Plans Can Change Insurance Carriers



New Rule for Grandfathered Plans

Under the Patient Protection and Affordable Care Act (PPACA), health plans that existed on March 23, 2010 are generally considered “grandfathered plans.” Grandfathered plans are exempt from some of the health care reform requirements, including coverage of preventive care services with no cost-sharing and patient protections such as guaranteed access to OB-GYNs and pediatricians.

Regulations were issued on June 17, 2010 regarding grandfathered plans. These regulations provided that certain changes to an existing plan could cause the plan to lose its grandfathered status. For example, plans could lose grandfathered status by significantly increasing costs or reducing benefits under the plan. Under the initial rule, plans would also lose grandfathered status by changing insurance policies, even if no other prohibited changes were made to the plan.

The Departments of Labor, Health and Human Services and Treasury (the Departments) have now amended the grandfathered plan regulations to **permit insured group health plans to change insurance policies or carriers**. Under the amended rule, group health plans will no longer automatically lose their grandfathered status merely because of a change in the plan’s insurance policy, certificate or contract of insurance. However, making any other prohibited change will still cause a loss of grandfathered status.

Reasons for the Amendment

The Departments stated the following reasons for reversing their position on this rule:

- The initial rule treated insured group health plans differently than self-funded group health plans. Insured group health plans were not able to change issuers or policies without losing grandfathered status, while self-funded plans could change their third-party administrators (TPAs), as long as they did not make any other prohibited change. The amended rule allows all group health plans to keep their grandfathered status when changing insurance companies or TPAs.
- A group health plan may not have a choice about changing its insurance issuer; for example, if the issuer withdraws from the market. Under the new rule, the plan sponsor can maintain grandfathered status if it has to contract with a new issuer.
- The initial rule unnecessarily restricted the ability of issuers to reissue policies to current plan sponsors for administrative reasons not related to the underlying terms of the plan. Issuers can now transition policies to a subsidiary or consolidate policies without losing grandfathered plan status.
- The initial rule potentially gave issuers undue and unfair leverage in negotiating the price of coverage renewals with grandfathered plan sponsors, which could interfere with competition and cost containment.

The New Rule Applies Only to Certain Plans

The amendment to the grandfathered plan regulations applies to **insured group health plans only**. For individual policies, a change in issuer is still considered a change in the health insurance coverage in which the individual was enrolled on March 23, 2010, and the new individual policy, certificate or contract of insurance would **not** be a grandfathered plan.

Also, whether the amended rule applies to your plan will depend on when the coverage under the new policy was **effective**. The amendment applies to changes to group health insurance coverage that are effective **on or after**

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November 15, 2010. The amendment **does not apply retroactively** to changes to group health insurance coverage that were effective before November 15, 2010.

For purposes of determining when a change is effective, 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.

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. Therefore, the relevant date for purposes of determining the application of the amendment is January 1, 2011. However, if 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 lose its grandfathered status.

Other Grandfathered Plan Guidelines Still Apply

Although grandfathered plans can now change policies or issuers without automatically losing grandfathered status, the plan will still cease to be a grandfathered plan if the new policy includes changes that are prohibited by the regulations. As with the other provisions of the regulations, the amended rule applies separately to each benefit package made available under a group health plan.

To maintain status as a grandfathered health plan, a group health plan that enters into a new policy, certificate or contract of insurance must also give the new health insurance issuer documentation of the plan's terms under the prior coverage, including information about benefits, cost-sharing, employer contributions and annual limits. This information must be sufficient to allow the insurer to determine whether a change causing a loss of grandfathered status has occurred.

Please contact your The Barnett Group representative with any questions about your company's health plan.

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