

REFORM *Update*

Issue Twenty-One

November 2010

November 23, 2010

The joint agency task force recently amended the interim final grandfathering regulations to change one of the original rules. Previously, if a fully insured plan changed insurance carriers, it would automatically lose its grandfathered status. This restriction no longer applies in all cases.

The agencies involved in issuing this guidance had received a number of comments on this requirement. Health plans and insurers had the following concerns:

- Some employers fully insure their group health plans and other employers self-fund their group health plans. Self-funded plans were allowed to remain grandfathered when they changed their third party administrators so long as their benefits and employee cost for the plan remained roughly the same. However, fully insured plans would automatically lose their grandfathered status if they changed insurance carriers, even though benefits and employee cost remained roughly the same. Clearly, fully insured plans were being treated differently from self-funded plans.
- If an employer has to stay with an insurance carrier to remain grandfathered, that carrier has an unfair advantage in negotiating the price of coverage renewals. Allowing employers to shop coverage helps them keep costs down and allows their employees to keep the coverage levels they have.
- Sometimes employers have to change insurance carriers for reasons beyond their control. For example, an insurance carrier may decide to discontinue coverage in a certain geographic area. In this case, employers are forced to find another carrier.
- The grandfather provision prevented insurance carriers from reissuing policies for administrative reasons unrelated to any change in the underlying insurance coverage.

Because of the numerous comments and concerns, the joint agency task force decided to amend the interim final regulations to allow group health plans to retain their grandfathered status even if they change insurance carriers. This amendment, however, does **not** apply to individual health insurance policies. Changing an **individual** insurance policy carrier will still cause a loss of grandfathered status.

A plan can still lose its grandfathered status for other reasons; for example, changing to a health insurance carrier with a policy that would normally have caused a loss of grandfathered status. Let's say your health plan covers services at 80% after the deductible and you change insurance carriers. If the new carrier covers services at only 75% after the deductible, then your plan would lose grandfathered status because of the reduced coinsurance, not because of the change in insurance carrier.

When a group health plan changes insurance carriers and wants to retain its grandfathered status, it must document its current plan terms (including benefits, cost-sharing, employer contributions and annual limits) for the new health insurance carrier. The new plan will need enough information to determine whether the changes in benefits would cause the plan to lose its grandfathered status. The necessary documents may include the insurance policy or the plan's summary plan description. The description of changes that can cause a loss of grandfathered status can be found in Issue 10 of our *Reform Update* at http://www.mw-news.com/Reform_Update/Reform_Update_10.pdf.

Determining the date this amendment takes effect is complicated. The amendment applies to changes in group health insurance carriers that take effect on or after November 15, 2010, the date the interim final regulations were made available for final comment. The amendment is not retroactive. It does not apply to changes in insurance carriers before this date. What's more, in most cases the date coverage becomes effective is not the date the insurance contract was signed. For example, a plan may sign an agreement with an insurance carrier on September 28, 2010, for a new policy to be effective on January 1, 2011. To determine whether this new amendment to the grandfather rules applies, the plan must use the January 1, 2011, effective date. If a plan chose a new insurance carrier on July 1, 2010, and coverage became effective on September 1, 2010, this amendment would not apply and the plan would lose its grandfathered status.

The joint agency task force is still reviewing all the comments and suggestions it has received on the interim grandfathering regulations. It is likely to release additional guidance soon.

Copyright McGraw Wentworth, Inc.

Our publications are written and produced by McGraw Wentworth staff and are intended to inform our clients and friends on general information relating to employee benefit plans and related topics. They are based on general information at the time they are prepared. They should not be relied upon to provide either legal or tax advice. Before making a decision on whether or not to implement or participate in implementing any welfare, pension benefit, or other program, employers and others must consult with their benefits, tax and/or legal advisor for advice that is appropriate to their specific circumstances. This information cannot be used by any taxpayer to avoid tax penalties.