



# EMPLOYEE BENEFITS CLIENT ALERT

July 27, 2010

## Health Care Reform Grandfathered Plan Status

Under the Patient Protection and Affordable Care Act of 2010 ("PPACA"), group health plans in existence on March 23, 2010 are exempt from certain PPACA requirements as long as such plans maintain their "grandfathered plan status." In June, the Department of Health and Human Services, the Department of Labor, and the Internal Revenue Service jointly issued the "Interim Final Rule for Group Health Plans and Insurance Coverage Relating to Status as a Grandfathered Plan under the Patient Protection and Affordable Care Act" (the "Rule"). The Rule provides guidance on maintaining grandfathered plan status as well as the administrative steps required to maintain grandfathered status. This Client Alert summarizes the guidance set forth in the Rule.

### Grandfathered Status

In order to qualify for grandfathered status, a group health plan must have been in existence on March 23, 2010, and must have continuously provided coverage since that date. If a group health plan offers more than one option, grandfathered status is analyzed separately for each option. For example, if a group health plan offers a PPO option and an HMO option, changes to the PPO option will not affect the grandfathered status of the HMO option.

A group health plan that is eligible for grandfathered status must meet two administrative requirements. First, any plan materials provided to participants must include a statement that the plan believes that it is a grandfathered health plan. The statement must provide contact information for individuals to obtain more information, ask questions or submit complaints. The Rule provides a model statement. Second, the plan must maintain records documenting the plan or policy terms that were in existence on March 23, 2010 as well as any other documents necessary to verify, explain or clarify its grandfathered status. These records must be made available upon request to participants, beneficiaries, policyholders, and state or federal agencies.

### Permissible Changes

A plan does not lose its grandfathered status if, without changing its eligibility requirements, it allows individuals to change their enrollment. For example, a new employee may enroll upon meeting the eligibility requirements, and an existing employee may enroll an eligible dependent.

The following changes **will not** cause a plan to lose its grandfathered status:

- Changes to the plan's premium.
- Changes required to comply with federal or state law.
- Changes to voluntarily comply with PPACA.
- Changes to increase benefits.
- Changes to a self-insured plan's third party administrator.



## Loss of Grandfathered Status

However, the following changes *will* cause a plan to lose its grandfathered status:

- Decreasing the percentage of the premium paid by the employer, if the employer's percentage falls more than 5% below the percentage in place on March 23, 2010.
- Increasing the coinsurance percentage above the level in place on March 23, 2010.
- Increasing any deductible or out-of-pocket maximum by more than medical inflation plus 15%.
- Increasing any copayment by more than the greater of \$5 (as adjusted for medical inflation) or medical inflation plus 15%.
- Eliminating all (or substantially all) benefits to treat or diagnose a particular condition.
- Adding an overall annual limit, if the plan did not have such an annual or lifetime limit on March 23, 2010, or decreasing the overall annual limit, if the plan had one on March 23, 2010. (Note: If the plan had an overall lifetime limit on March 23, 2010, the plan the plan may adopt an over annual limit that is as high or higher than the previous overall lifetime limit.)
- Adding an overall lifetime limit, if the plan did not have such a limit on March 23, 2010, or decreasing the overall lifetime limit, if the plan had one on March 23, 2010.
- Obtaining a new insurance policy providing plan benefits.
- Transferring employees from a nongrandfathered plan to a grandfathered plan, unless there is a bona fide employment reason for transfer.
- Conducting a reorganization, merger, or acquisition, if the principal purpose is to cover individuals on the grandfathered plan.

## Collectively Bargained Plans

Some plans are established or maintained pursuant to one or more collective bargaining agreements ("CBA Plans"). If a CBA Plan is fully insured, the plan automatically maintains grandfathered status until the termination date of the last collective bargaining agreement relating to the coverage in effect on March 23, 2010. The plan may maintain grandfathered status beyond that termination date, but only if the plan refrains from the changes (described above) that would cause a non-CBA Plan to lose grandfathered status. Self-funded CBA Plans are subject to the general grandfathered rules described above.

Grandfathered plans must comply with some of PPACA's mandates. All CBA Plans claiming grandfathered status—even fully insured CBA plans—must comply with these mandates at the same time as other grandfathered plans.

## Transitional Rules

The agencies issuing the rule recognized that plan sponsors might have decided to make changes to their plans before the Rule was published. To address this problem, the Rule includes the following transitional provisions:

- Changes adopted prior to March 23, 2010 will not affect grandfathered plan status (even if the changes take effect after March 23, 2010);
- Changes adopted after March 23, 2010 but before the Rule was issued will not affect grandfathered plan status, if the changes only modestly exceed the Rule's parameters. For enforcement purposes, the agencies will consider the plan's good faith efforts to comply with PPACA before the Rule was published.
- Changes adopted after March 23, 2010 and before June 14, 2010 may be revoked or modified in order to preserve the plan's grandfathered status, if the revocation or modification is effective as of the first day of the first plan year following September 23, 2010.

## Next Steps

In light of the Rule, we recommend that plan sponsors consider the following:

- Evaluate the advantages and disadvantages to maintaining grandfathered status on each health plan option;
- If a plan sponsor wishes to maintain grandfathered status, the sponsor should:
  - Review any plan amendments or design changes adopted on or after March 23, 2010 that may impact the plan's grandfathered status and take appropriate corrective action;
  - Update all participant communication materials with the required statement on the plan's grandfathered status;
  - Establish a document retention policy to preserve records demonstrating the plan's grandfathered status;
  - Evaluate all plan design, cost sharing, vendor changes, and plan amendments to ensure they do not jeopardize the plan's grandfathered status.

## Additional Information

If you wish to visit with us about the latest health care reform guidance, please contact your Kutak Rock LLP attorney or a member of our Employee Benefits Practice Group listed below. For more information on our Employee Benefits practice and for recent Employee Benefits news and alerts, please visit us at [www.kutakrock.com](http://www.kutakrock.com).



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