

July 8, 2010

CLIENT ALERT –GRANDFATHERED HEALTH PLANS

On June 17, 2010, the Department of Labor issued regulations describing “grandfathered” health plans under the Patient Protection and Affordable Care Act. Generally, a “grandfathered” plan is one in existence on March 23, 2010. A “grandfathered” plan is not required to comply with certain requirements.

This Alert will highlight how “grandfathered” plans may lose their grandfathered status under these regulations.

- **Why does it matter?**
 - Beginning in 2011, fully insured group medical plans will be required to satisfy the non-discrimination requirements of Section 105(h) of the Internal Revenue Code. Previously, these requirements applied only to self-insured group medical plans. Grandfathered fully insured plans are not subject to these new requirements.

Comment: Many fully-insured plans are designed to offer more generous medical benefits to highly compensated employees. For example, a plan may offer “bronze,” “silver,” and “gold” levels of coverage to its hourly, salaried, and officer classes of employees. These types of plans would violate the Section 105(h) rules and would result in taxable income to the highly compensated employees beginning in 2011 – unless the plan is grandfathered.

- Grandfathered plans will not be subject to certain limits on cost-sharing beginning in 2014. These limits are the same as the out-of-pocket limits for high-deductible health plans - \$5,950 for individual coverage and \$11,900 for family coverage. The maximum deductibles will be limited to \$2,000 for individual coverage and \$4,000 for family coverage.
- Grandfathered plans will not be subject to new claims procedures that will require an appeal process including an external review.
- **How is grandfathered status lost?**

Many changes in the design of a group medical plan will result in a loss of grandfathered status, including:

- Any increase in the co-insurance amount;
- Increases in the deductible or out-of-pocket limits if they exceed 15% plus the rate of medical care inflation from March 2010;

- A decrease of more than 5% in the employer's contribution rate for coverage;
- Elimination of coverage to diagnose or treat a particular condition; and
- Decreases in the plan's annual limit on plan benefits.

Is grandfathered status lost by enrolling new participants in the plan?

No. New employees may enroll, and participants may add dependents to the plan without loss of grandfathered status.

Are there other requirements for grandfathered plans?

Yes. A grandfathered plan will be required to include a statement in materials provided to participants that states that it believes that it is a grandfathered health plan under the health reform act.

Comment: Presumably, this statement will be required to be included in open enrollment materials for the 2011 plan year.

The bottom line: Proceed cautiously. Consider the impact of every plan amendment upon your plan's grandfathered status.