

ALERT: HEALTH CARE REFORM BILL

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AGENCIES AMEND GRANDFATHER REGULATIONS

The agencies responsible for implementing the health care reform law's grandfather rules (the Departments of Labor, Treasury and Health and Human Services) have amended the regulations that they issued last June. Under the amendments, group health plans may enter into new insurance contracts without affecting their grandfathered status, provided that there are no changes in the coverage that would cause loss of grandfathered status (e.g., elimination of benefits for a condition and certain changes in cost-sharing requirements). Unfortunately, the amendment is not effective retroactively, so new insurance contracts that became effective before November 15, 2010 are NOT grandfathered. In addition, for new insurance contracts with effective dates on or after November 15, 2010, the new insurance carrier must be provided with documentation of the plan terms under the prior policy (e.g., a copy of the policy or a summary plan description) sufficient to determine whether any change in the coverage would cause the plan to lose grandfathered status.

BACKGROUND INFORMATION ON THE GRANDFATHER RULES

Regulations define a grandfathered plan as a group health plan that was in existence on March 23, 2010 and covered at least one individual, provided that none of several changes causing loss of grandfathered status has occurred. Under the grandfather regulations as issued last June, one change that caused loss of grandfathered status was entering into a new policy, certificate or contract of insurance. (For additional information on what changes will cause a plan to lose grandfathered status, see Willis Human Capital Practice *Alert*, Vol. 3, No. 12, "**Regulations on Grandfathered Plans.**") Comments that the agencies received on the June 17 grandfather regulations included several objections to this provision, and those led the agencies to amend it.

AMENDMENTS TO RULE ON NEW INSURANCE POLICIES

The amendments allow a group health plan to change health insurance coverage without ceasing to be a grandfathered health plan. That is, a group health plan or the plan's sponsor may enter into a new policy, certificate, or contract of insurance with the existing carrier or a new carrier, and that change by itself will not result in the plan losing grandfathered status. There are exceptions to this new rule and some conditions that must be met if a plan is to retain grandfathered status following a change of insurance policies.

THE EXCEPTIONS

A new insurance policy will still cause loss of grandfathered status in some situations.

- Individual insurance policies are not affected by the amendment, and any new individual insurance policy will not be grandfathered.

- Policies that have effective dates after March 23 and before November 15, 2010 are not affected by the amendment, meaning that those new policies resulted in a loss of grandfathered status and this amendment does nothing to change that. (Keep in mind, however, that special rules for collectively bargained plans or transition rules may preserve grandfathered status for certain policies, as explained in Willis Human Capital Practice *Alert*, Vol. 3, No. 12, “**Regulations on Grandfathered Plans.**”) For this purpose, the effective date of a policy is the effective date of the coverage provided by the policy. For example, if a plan sponsor enters into an agreement with an insurance carrier on September 28, 2010 for a new policy that will provide coverage starting on January 1, 2011, then January 1, 2011 is the date the new policy is effective, the amendment applies and the change of policy will not cause loss of grandfathered status. On the other hand, if the plan sponsor entered into a new agreement with the insurance carrier on July 1, 2010 for a new policy that provides coverage starting on September 1, 2010, the amendment would not apply and the plan would have lost its grandfathered status on September 1.

THE CONDITIONS

If a plan begins providing benefits through a new insurance policy, three conditions must be met for the plan to retain grandfathered status.

- The interim final regulations specify that certain changes to the coverage a plan provides or the contributions for that coverage will cause the plan to no longer be a grandfathered health plan (e.g., certain changes in cost-sharing requirements). If the new insurance policy results in any of these changes being made to the coverage provided under the plan, grandfathered status will be lost. Stated differently, any differences in the coverage provided by the previous policy and the coverage under the new policy may cause a loss of grandfathered status, even though the new policy itself does not cause loss of grandfathered status.
- A group health plan that is changing health insurance coverage must provide the succeeding health insurance issuer (and the succeeding health insurance issuer must require) documentation of plan terms (including benefits, cost sharing, employer contributions and annual limits) under the prior health insurance coverage sufficient to make a determination whether the new policy makes changes to the coverage provided by the old policy that result in loss of grandfathered status.
- In applying this amendment, as with other provisions of the grandfather regulations, the rules apply separately to each benefits package made available under a group health plan.

The agencies predict that “Final regulations on grandfathered health plans will be published in the near future,” so additional changes are likely.

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