

HEALTH LAW ALERT

November 17, 2010

Federal Agencies Amend Grandfathered Health Plan Rule Group Plans Permitted to Change Insurance Carriers

Today, the Department of Health and Human Services' Office of Consumer Information and Insurance Oversight, the Department of the Treasury's Internal Revenue Service, and the Department of Labor's Employee Benefits Security Administration (the "Agencies") jointly issued amendments to the interim final rules concerning the status of "grandfathered" plans under the health reform provisions enacted earlier this year (the "Affordable Care Act"). The amendments permit insured group health plans to change insurance carriers without losing grandfathered health plan status, provided that enrollees' coverage under the new policy does not reduce benefits or increase enrollees' out-of-pocket costs substantially in excess of medical inflation, as outlined in the original interim final rule. Groups that changed insurance carriers prior to November 15 have lost their grandfathered status, notwithstanding these amendments. The amendments have no effect on individual coverage.

The amendments went into effect on November 15 and are published at 75 *Federal Register* 70114. Comments on the amendments are due on or before December 17, 2010.

Entering into New Policies, Certificates, or Contracts of Insurance

The original interim final rules on grandfathered health plan status described six changes in benefits that would result in a plan losing its grandfathered status. In addition, an

Resources Available

[Click here](#) to see the OCIIQ version of the amendments incorporated into my compilation of Selected Federal Health Insurance Provisions (*see* first line under "Compiled Rules") (or see the "Resources" page at tbixbylaw.com).

For more information on the original rules, see my 6/17/2010 Health Law Alert on Grandfathered Status ([click here](#) or see "Resources" page at tbixbylaw.com).

[Click here](#) for a table showing the Affordable Care Act provisions from which Grandfathered Health Plans are exempt (or see "Resources" page at tbixbylaw.com).

[Click here](#) for the Federal Register publication of the amendments.

insured group health plan would lose its grandfathered status by “enter[ing] into a new policy, certificate, or contract of insurance after March 23, 2010.” This provision prevented insured groups from changing insurance carriers, unless they were prepared to give up their grandfathered status.

The Agencies determined that the limitation on entering into new contracts of insurance gave grandfathered health plans’ current carriers “undue and unfair leverage in negotiating the price of coverage renewals with [the plans’] sponsors . . . and that this interferes with the health care cost containment that tends to result from price competition.” Moreover, the limitation “unnecessarily restrict[s] the ability of insurers to reissue policies . . . for administrative reasons unrelated to any change in the underlying terms of the health insurance coverage,” such as transitioning a policy to a subsidiary or consolidating a policy that includes several riders or amendments.

The Agencies therefore “have determined it is appropriate to . . . allow a group health plan to change health insurance coverage . . . without ceasing to be a grandfathered health plan, provided that the plan continues to comply fully with the standards” in the interim final rule by not making any of the six benefit changes that result in a plan losing its grandfathered status.

A group health plan that enters into a new policy must provide (and the new insurance carrier must require) documentation necessary to demonstrate that the change in insurance carriers does not result in a change of benefits that violates the standards that trigger loss of grandfathered health plan status.

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