



WEDNESDAY, SEPTEMBER 22, 2010

HEALTH CARE REFORM UPDATE

NEW CLARIFICATIONS ON GRANDFATHERING AND INTERNAL CLAIMS REVIEW PROCESS

On Monday, September 20 the Department of Health and Human Services (HHS) and the Department of Labor (DOL) jointly issued a brief set of Frequently Asked Questions (FAQs) addressing certain parts of the Patient Protection and Affordable Care Act (PPACA). Rules on internal claims review, grandfathering, coverage of children to age 26, and access to emergency services are among the topics discussed in the 16 questions and answers of the FAQ document. Additionally, the Departments noted that they have issued a Request for Comments on application of the non-discrimination rules to non-grandfathered insured plans.

One key note in the FAQs regarding the grandfathering rules is that the Departments expect to issue further guidance on circumstances under which grandfathered insured plans may change carriers without losing grandfathered status. Previous information had stipulated that a change in carriers would automatically result in a loss of grandfather status.

The FAQs are prefaced by a statement from the Departments emphasizing that their approach to implementation "is and will continue to be marked by an emphasis on assisting (rather than imposing penalties on) plans, issuers and others that are working diligently and in good faith to understand and come into compliance with the new law."

Below we have outlined some of the key highlights of the FAQs for your review. The full FAQs are available at <http://www.dol.gov/ebsa/faqs/faq-aca.html>. Additionally, the notice of the Request for Comments on application of the non-discrimination rules to non-grandfathered insured plans is available at <http://www.irs.gov/pub/irs-drop/n-10-63.pdf>.

The agencies have advised that they do not expect to issue final versions of any of the interim rules until early next year. We remain committed to keeping you apprised of developments regarding the PPACA rulemaking process, partnering with you to understand and comply with the guidelines pertaining to the health care reform legislation. We hope you find this information helpful and invite you to review past issues of our *Health Care Reform Update* at <http://www.trion.com/healthreform>. Please continue to share your questions and comments with us by emailing health.reform@trion.com or calling 610.945.1198. Thank you.

HHS and DOL FAQs Overview:

Internal Claims Review Processes:

- With respect to internal claims review processes (*which are only applicable to non-grandfathered plans*), the Departments have decided to give plans a grace period to comply with certain new requirements imposed by the Interim Final Rule.
- Plans will be given until July 1, 2011 to comply with the new requirements regarding:
 1. the 24 hour timeframe for making initial determinations with respect to urgent claims (the 72 hour requirement in the current DOL rules will continue to apply);
 2. the requirement to provide notices in a culturally and linguistically appropriate manner;
 3. requirements for providing additional content and specificity in adverse benefit determination notices; and



4. the rule allowing claimants to immediately proceed to external review or other relief if a plan fails to strictly adhere to all requirements of the Interim Final Rule on claims review.
During the grace period, plans must, continue to take good faith steps toward implementation.

Additional details regarding the grace period are published in DOL Technical Release 2010-02, available at <http://www.dol.gov/ebsa/pdf/ACATechnicalRelease2010-02.pdf>.

Changes have also been made to the Model Notice for Adverse Benefit Determinations to clarify the document with respect to timeframes for making initial benefit determinations. The revised model notice is available at <http://www.dol.gov/ebsa/IABDModelNotice2.doc>.

Grandfathering:

- The Departments state that they will not treat a grandfathered plan as having lost grandfathered status immediately upon making a change to the contribution rate, if the plan complies with these notification requirements. Instead, it appears that the Departments will consider grandfather status to be lost as of the date the issuer or multiemployer plan is notified of a 5% or greater reduction in the contribution rate.
- Policies renewed prior to January 1, 2011 must take these steps before January 1, 2011 to obtain this relief, and the relief only applies with respect to changes in contribution rate.
- For plans that require no employee contribution or a fixed-dollar employee contribution toward the cost of coverage, a change to the employer's contribution will not cause loss of grandfather status (even if it is a reduction) as long as there is no change to the employee's zero or fixed-dollar contribution.

Dependent Children:

- A plan that uses the IRS definition of "child" (sons, daughters, stepchildren, adopted children, and children placed for adoption) for purposes of determining eligibility for coverage to age 26 will be considered to be in compliance with PPACA as long as eligibility is not conditioned on factors such as student status or residency for those individuals.
- For individuals who do not meet the IRS definition of "child," (e.g., grandchildren, nieces), plans are permitted to impose other eligibility requirements such as residency, or dependency for tax purposes.

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