



TUESDAY, NOVEMBER 16, 2010

HEALTH CARE REFORM UPDATE

CLARIFICATION ON GRANDFATHERING FOR PLANS SWITCHING CARRIERS

On Monday, November 15, federal regulators announced a change to the interim rules on grandfathered health plans under the Patient Protection and Affordable Care Act (PPACA), permitting employers to change insurance carriers without automatically losing their grandfathered status. This change is the result of four primary concerns raised in response to the initial regulation. In brief the concerns reviewed were:

1. The initial provision provided different treatment for insured plans vs. self-insured plans.
2. There are instances when an employer must change due to insurer availability – for instance if an insurance carrier were to withdraw from a specific market.
3. The initial provision would unnecessarily restrict the ability of issuers to reissue policies to the current plan sponsors for reason unrelated to any change in the underlying terms of the health insurance coverage. For example, to transition a policy to a subsidiary or the original insurer.)
4. The initial restriction on changing carriers could result in giving unfair leverage in price negotiations to insurance carriers during renewal discussions if employers were staying with the same insurer to avoid losing grandfather status.

After reviewing these concerns the Department of Health and Human Services (HHS), the Department of Labor (DOL) and the U.S. Treasury have issued a modification which provides that “a group health plan does not cease to be grandfathered health plan coverage merely because the plan (or its sponsor) enters into a new policy, certificate, or contract of insurance after March 23, 2010.” The revised rule is available at <http://www.hhs.gov/ociio/regulations/grandfather/factsheet.html> and is expected to be published in the Federal Register on November 17, 2010.

A concern remains, however, in that the rule change applies prospectively for carrier changes effective on or after November 15, 2010. Therefore, plans that switched carriers prior to November 15 thereby losing their grandfathered status would not be able to take advantage of the amended rule. The Departments will seek public comments on the rule change for 30 days following its publication in the Federal Register, making December 17 the likely due date to submit comments.

The Departments have also advised that they are still considering further changes to the rules on grandfathered health plans and they expect to release a final version of the rules in the near future. As your partner, we remain committed to keeping you apprised of developments regarding the PPACA rulemaking process, working together 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.

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