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Healthcare re-FORUM

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More Clarification of Grandfathering Legislation

To clarify previously issued guidance about grandfathered health plan provisions under the PPACA, the Departments of Health and Human Services, Labor and the Treasury (the Departments) jointly released Frequently Asked Questions Part VI (FAQs) (http://www.dol.gov/ebsa/faqs/faq-aca6.html). These FAQs answer questions from various stakeholders, such as group health plans and health plan issuers, and provide examples to help explain the new law.

Transferring Employees to Another Benefit Plan

According to the Interim Final Regulations (IFR) about grandfathering, a plan could lose its grandfathered status if there is no "bona fide employment-based reason" for transferring employees from one benefit plan or package to another of lesser benefits.

What do the Departments consider a bona fide employment-based reason for determining if a health plan should lose its grandfathered status? For example, can an employer transfer employees to another grandfathered plan because their current plan is being eliminated?

The Departments interpret "bona fide employment-based reason" to cover a variety of circumstances, including when a benefit package or plan is eliminated due to:

- The issuer exiting the market
- The issuer no longer offering the product to the employer (for example, because the employer no longer meets the minimum participation requirement)
- Declining participation makes it impractical for the plan sponsor to continue to offer the benefit package
- A collective bargaining process

Transfers are also allowed under other circumstances as long as multiple benefit packages covering a significant number of other employees are available to those being transferred.

Changes to Prescription Drug Formularies

Consumers' cost-sharing amounts may increase due to changes in prescription drug formularies when a brand-name drug is reclassified from "preferred" to "non-preferred" because a generic alternative becomes available.

If a brand-name drug is reclassified by a plan as "non-preferred" and its required copay increases, does the plan lose its grandfathered status?

No. A plan will not lose its grandfathered status if it reclassifies a brand-name drug into a higher cost-sharing tier simply because a new generic alternative becomes available.

Value-Based Insurance Designs

Part V of the Departments' FAQs clarified value-based insurance designs (VBID) and how they can incent individuals to use higher-value and/or higher-quality services or facilities by not requiring individuals to pay cost sharing if they receive preventive care services at these facilities (http://www.dol.gov/ebsa/faqs/faq-aca5.html).

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Would a plan lose its grandfathered status if it begins to charge a copayment for preventive care services received at an in-network outpatient hospital but not at an in-network ambulatory care center, when the plan had not previously charged a copayment for such services received at either type of facility? As required, the plan would waive the copayment for an individual for whom it would be medically inappropriate to have the services provided at the ambulatory care center.

The Departments indicate that using VBID to incent members to receive preventive care services in a higher-value (less costly) facility would not cause the health plan to lose its grandfathered status as long as the plan follows other rules governing the use of VBID. The Departments also note they are seeking further information about VBID and wellness programs and will issue additional guidance in future regulations.

Plan Amendments

A plan operating on a calendar year is considering an amendment to the terms of its plan that would cause it to lose grandfathered status by exceeding the thresholds described in the grandfathering IFR (e.g., eliminating benefits, increasing cost-share requirements, decreasing employer contribution rates).

If the plan adopts such an amendment on July 1, 2011, and the change becomes effective for the plan year beginning on January 1, 2012, when does the plan lose its grandfathered status?

The Departments clarify that a plan making a change that will exceed the thresholds described in the IFR would lose its grandfathered status on the date the amendment becomes effective (i.e., the first day of the next plan year), not when the amendment is adopted.

What is the impact of plan amendments that become effective before the first day of the next plan year?

The plan will cease to be a grandfathered plan on the effective date of the amendments. If a plan sponsor wishes to avoid loss of grandfathered status in the middle of a plan year, any changes that will cause the plan to lose grandfathered status should be made effective the first day of the next plan year.

Employer Contribution Rates

The plan sponsor of a plan covering both retirees and active employees contributes $300 per year to the retirees multiplied by their years of service with the employer, capped at $10,000 per year.

As the cost of coverage increases over time, how is it determined whether the employer's contribution rate has decreased for purposes of maintaining grandfathered status?

If the above formula does not change, then the employer is not considered to have reduced its contribution, regardless of any increase in the total cost of coverage, and the plan would not lose its grandfathered status. If the employer decreases its contribution rate formula towards the cost of coverage by more than five percent below the contribution rate in effect on March 23, 2010 (i.e., to less than $285 per year times the retirees' years of services, or capped at less than $9,500 per year), the plan would lose grandfathered status.