November 23, 2010

3 Overview: Grandfather Status under ACA

- ACA requires that insurers and plan sponsors modify their coverage to comply with significant new insurance market reforms, many of which are effective the first plan year (policy year for individual policies) on or after September 23, 2010.
- ACA "grandfathers" certain plans that were in existence on the date of enactment for some of the insurance market reform requirements.
- Generally, a grandfathered plan will be exempt from certain insurance market reform provisions of ACA, including (but not limited to) requirements related to preventive care, internal and external review, nondiscrimination based on income, cost sharing and deductibles, guaranteed issue/renewal, and rating restrictions.
- Grandfathered plans are not exempt from requirements related to annual and lifetime limits, dependent coverage extension to age 26, rescission of coverage, preexisting condition exclusions, reporting of Medical Loss Ratio, Summary of Benefits using HHS Uniform definitions, waiting periods, and individual and employer mandates.

Definition of a "Grandfathered Plan"

- To be a grandfathered plan, the policy or group health plan must have had at least one individual enrolled in coverage on March 23, 2010 and the policy or plan must have continuously covered someone since March.23, 2010 (even if not the same individuals).
- Any new policy, certificate, or contract of insurance (versus renewal) issued after March 23, 2010 is not grandfathered.

  Example: An insured plan moves from Insurer X to Insurer Z after March 23, 2010 – the Plan becomes a non grandfathered plan.
- Any insurance policy sold to new entities or individuals after March 23, 2010 will *not* be grandfathered, even if the product was offered in the group or individual market before March 23, 2010.
- If family members of an individual who is enrolled in a grandfathered health plan as of March 23, 2010 enroll in the plan after March 23, 2010, the plan or health insurance coverage is also a grandfathered health plan with respect to the family members.
- A group health plan that provided coverage on March 23, 2010 generally is also a grandfathered health plan with respect to new employees (whether newly hired or newly enrolled) and their families who enroll in the grandfathered health plan after March 23, 2010.

Permissible Changes – No Loss of Grandfather Status

- Changes to a policy or plan's premium
- Changes required to comply with federal or state law
- Changes to voluntarily comply with provisions of ACA or to increase benefits
- Changes to a plan's third party administrator
- Changes to plan financial structure, e.g., switching from a health reimbursement arrangement to major medical coverage, or from insured to self-funded coverage
- Changes to a provider network; and
- Changes to a prescription drug formulary

Impermissible Changes – Will Cause the Loss of Grandfathered Status

- Elimination of Particular Benefit: A policy or plan will lose its grandfathered status if it eliminates all or substantially all benefits to diagnose or treat a particular condition (including a necessary element to diagnose or treat a condition).
- Increase in Percentage Cost-Sharing Requirement: Any increase in a percentage cost-sharing requirement (such as for co-insurance).
- Increase in Fixed-Amount Cost-Sharing Requirement Other Than a Copayment: Any increase in a fixed-amount cost-sharing requirement other than a copayment (such as a deductible or out-of-pocket limit) that exceeds medical inflation plus 15%.
- Increase in a Fixed-Amount Copayment: Any increase in a fixed-amount copayment that exceeds the greater of: (A) $5 x (1+medical inflation) or (B) medical inflation plus 15%.
- Decrease in Contribution Rate by Employer (Contribution Rate Based on Cost of Coverage): Any decrease in a contribution rate based on cost of coverage by an employer that exceeds 5%.
- Decrease in Contribution Rate by Employer (Contribution Rate Based on Formula): Any decrease in a contribution rate based on a formula (such as tons of coal mined or hours worked) by an employer that exceeds 5%.
- Addition or decrease of an Annual Limit: Any addition of an annual limit to a plan.

Administrative Requirements

- To maintain grandfathered status, a plan or health insurance coverage must:
    - Include a statement, in any plan materials provided to participants describing the benefits provided under the plan or health insurance coverage, that the plan or coverage believes it is a grandfathered health plan
    - Provide contact information for questions and complaints;

- Insurers and plans must maintain records documenting policy or plan terms that were in effect on March 23, 2010, and any other documents necessary to verify, explain, or clarify its status as grandfathered plan.
- The insurer or plan must make records available upon request.

Transition Rules

- For plans that already have made changes prior to the publication of the regulation (June 14, 2010) the following transitional rules apply:
  - **Changes Adopted Prior to March 23, 2010:** A policy or plan will *not lose grandfather status based on changes that would otherwise cause* a loss of such status, if such changes were adopted *before March 23, 2010 (even if* they take effect after March 23, 2010) so long as such changes were adopted pursuant to a legally binding contract, insurance filing, or written plan amendment.
  - **Good Faith Compliance:** For plan changes adopted *after March 23, 2010 but before issuance of the Rule, which "only* modestly exceed" the parameters established by the Rule, the agencies will "take into account good-faith efforts to comply with a reasonable interpretation of ACA" in deciding whether such changes have caused the policy or plan to lose grandfathered status.
  - **Grace Period:** For more significant changes to a policy or plan adopted *after March 23, 2010* but before the Rule's issuance, which contravene the parameters established by the Rule, the insurer or plan sponsor may revoke such change by the first plan year beginning on or after September 23, 2010 and not lose grandfather status. If such changes are not revoked or modified, the plan will lose grandfathered status.

MCS Plan

- MCS will provide administrative assistance and information to brokers, agents and employers, and plan participants to facilitate the effectiveness and compliance with the implementation of the grandfathering provisions.
- For details, please consult your account executive.