

Federal Agencies Issue Clarifications to the Interim Final Rules for Grandfathered Health Plans

The U.S. Departments of Treasury, Labor, and Health and Human Services have issued an amendment to the June 17, 2010 interim final rules on grandfathered health plan status for group health plans under the *Patient Protection and Affordable Care Act*. The Departments have also issued sub-regulatory guidance clarifying the requirement to provide notice of a plan's grandfathered status. The general requirements under the grandfathered plan rules are discussed in more detail [here](#).

Fully-Insured Group Health Plans May Change Insurance Carriers Without Forfeiting Grandfathered Status

The amendment to the interim final rules allows a fully-insured group health plan to enter into a new policy, certificate, or contract of insurance after March 23, 2010 without forfeiting its grandfathered plan status, so long as the terms of the new policy, certificate or contract continue to comply with the already established grandfathered plan standards. In addition, the group health plan must provide the new insurer with (and the insurer must require) sufficient documentation of the terms of the plan before the change (including benefits, cost sharing, employer contributions and annual limits) to determine if the plan may remain grandfathered under the new policy, certificate or contract. These new rules do not apply to insured coverage obtained in the individual market or to plans subject to a collective bargaining agreement (collectively bargained plans were already permitted to change insurance carriers under the grandfather rules without forfeiting grandfathered status). Furthermore, these rules do not affect a self-insured plan's ability to change third-party administrators without forfeiting grandfathered plan status.

The new rules are prospective and apply based on the date that a new policy goes into effect, not the date on which the policy is signed. If an employer changes insurers after March 23, 2010 but prior to the effective date of this amendment, then the new plan ceases to be a grandfathered plan. For example, if an employer signed a contract with insurer on September 1, 2010 for a new policy to be effective on January 1, 2011, then the plan retains its grandfathered status because the policy is effective after the date of the amended rules. On the other hand, if a plan adopted a new policy on July 1, 2010 for an effective date of September 1, 2010, the plan would lose its grandfathered status because the new plan was effective prior to the date this amendment was issued.

Clarification on Requirement to Disclose Grandfathered Plan Status

The DOL has also clarified the scope of health plan materials which must contain a description of a plan's grandfathered status. In sub-regulatory guidance issued on October 28, 2010, the DOL stated that a grandfathered health plan is not required to include a statement describing such plan's grandfathered status in every communication with plan participants, but plans must include it whenever a summary of benefits is provided to plan participants. The guidance encourages plan sponsors to identify "communications in which disclosure of grandfather status would be appropriate and consistent with the goal of providing participants

and beneficiaries information necessary to understand and make informed choices regarding health coverage.”

More to Come

The departments will be accepting comments on this amendment to the interim final rules for 30 days following publication and may make prospective changes based on input received. They have also indicated that final regulations on grandfathered health plans will be published in the near future.

If you have any questions about the new rules or wish to discuss changes to your group health plans, please contact your Ropes & Gray advisor or a member of our Employee Benefit practice or Benefits Consulting Group. You may also find copies of the rules and additional guidance issued by the agencies under the Employer portal on the Ropes & Gray [Health Reform Resource Center](#) website.

[Harvey D. Cotton](#)

[Joshua A. Lichtenstein](#)