

Federal Health Care Reform and “Grandfathered Plans”

Clients and Friends:

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Do you remember during the health care reform (HCR) debate when President Obama said, in effect, “If you like your health plan, you can keep it?” As it turns out, the President was talking about “**grandfathered plans.**” Health care reform is now law; health plans that were in existence on March 23, 2010 have been given “grandfathered” status.

What Does This Mean? Three weeks ago the Departments of Labor, Treasury, and Health and Human Services issued interim rules regarding grandfathered plans. While we are now in the interim rules’ 60-day comment period, as of today grandfathered plans are exempt from some, but not all, of HCR’s requirements. For example, grandfathered plans can:

1. Avoid offering certain first-dollar coverage for preventive health services
2. Continue to favor highly compensated employees with better health benefit plans
3. Keep pre-authorization requirements in place or OB/GYN and emergency services
4. Maintain different coverage levels for emergency services in and out of network.
5. Ignore certain HHS reporting requirements, certain cost-sharing restrictions, and new appeal process rules.

In addition, grandfathered plans have delayed compliance deadlines for several of the new HCR requirements, including certain restrictions on annual benefit limits.

Not all current plans will maintain grandfathered status. The regulations make clear that plans will lose their grandfathered status if they choose to significantly cut benefits, increase out-of-pocket spending for consumers, or make other big changes. More specifically, an employer’s plan loses grandfathered status if:

1. The employer changes insurance companies or their insurance policy, certificate, or insurance contract
2. The plan eliminates all or substantially all benefits to diagnose or treat a particular condition
3. Member coinsurance percentage is increased by any amount after March 23, 2010
4. Deductibles or out-of-pocket amounts exceed the limits defined by the HCR law
5. Copayments are increased faster or more than allowed, when combined with medical inflation rates
6. The employer decreases premium contributions of any rate tier by more than 5 percent

SIG believes that HCR’s improvements are good for employers and consumers and that most employers and certainly most consumers should have no concern about their plan losing grandfathered status. However, some employers have stated that they would prefer to keep their plans as they are. The federal agencies’ projections over the next three years, which you can see at www.healthreform.gov/newsroom/keeping_the_health_plan_you_have.html, predict that large employer plans (i.e., those with more than 100 employees) are more likely to maintain grandfathered status. Fortunately, most of these plans already offer the patient protections applied to non-grandfathered plans, such as no pre-existing condition exclusions for children, no rescissions of coverage when a person gets sick, and open access to OB-GYNs and pediatricians.

Smaller employers will be more likely to move to non-grandfathered plans, with about two-thirds having the new HCR protections and benefits by 2014. These employers are more apt to change carriers or plans, or change employee cost-sharing. In addition, smaller employers frequently have plan offerings changed involuntarily, as carriers choose to close plan designs, or increase deductibles, copays, or coinsurance.

Finally, according to the federal predictions, a substantial majority of the individual policyholders will be in non-grandfathered plans by 2014. On average, individual policyholders are much more likely to change plans in a given year, and as soon as that occurs, the grandfathered status is lost, and the new HCR protections will apply.

It’s possible that the new “interim rules” will be amended after the current 60-day comment period. If so, we will keep you informed. In the meantime, feel free to call or email with questions or comments. We love hearing from you. To see other SIG updates about Health Care Reform, go to <http://www.siginsures.com/employeebenefits.html>.