



June 15, 2010

Dear Client:

On June 14, 2010, the Departments of Health and Human Services (HHS), Labor (DOL), and Treasury released an interim final regulation regarding a plan's status as a grandfathered health plan under the PPACA. **The interim final rule provides guidance on how a plan can retain grandfathered status.**

A plan will lose its grandfathered health plan status if it:

- Eliminates all or substantially modifies all benefits to diagnose or treat a particular condition;
- Increases by any amount a percentage cost sharing requirement (such as coinsurance);
- Increases fixed amount cost sharing requirements (such as deductibles or out-of-pocket maximums) by more than the rate of medical inflation (from March 23, 2010) plus 15 percentage points;
- Increases copayments that exceed the greater of: 1) the rate of medical inflation plus 15 percentage points; or 2) \$5 increased by medical inflation;
- Reduces employer contributions by more than 5 percentage points below the contribution rate as of March 23, 2010;
- Reduces or adds certain new annual or lifetime limits on the dollar value of benefits; or
- Changes the insurance company.

Plans must also provide notice to participants or beneficiaries that the plan believes it is a grandfathered plan and maintain plan documents and records necessary to verify, explain, or clarify its status as a grandfathered health plan. This notice must be provided every time the sponsor distributes materials regarding the plan.

The interim final rule provides for good faith compliance with a reasonable interpretation of the statutory requirements. Government agencies may disregard at their discretion changes to plan and policy terms adopted prior to June 14, 2010, that only modestly exceed the changes outlined in the regulation that would cause a plan to lose grandfathered status. In addition, the interim final rule clarifies that the group market (insurance) reform provisions of the PPACA do not apply to stand-alone, retiree-only plans. Specifically, this applies to retiree plans that cover less than two participants who are current employees.

With respect to plans developed under collectively bargained agreements (CBAs), the interim final rule states that:

- The insurance reform provisions that apply to all grandfathered health plans, such as the coverage of adult children to age 26 and the prohibition on lifetime limits, apply to all collectively bargained plans at the same time that they apply to other grandfathered health plans (for many of the provisions, as early as plan years beginning on and after September 23, 2010).
- Fully insured collectively bargained plans ratified before March 23, 2010, will maintain grandfathered health plan status at least until the date on which the last agreement relating to the coverage that was in effect on March 23, 2010, terminates. It appears that this rule applies even if there is a change that normally would result in the loss of grandfathered health plan status before the date that the CBA terminates. However, this special rule does not apply to self-insured, collectively bargained plans.

For plan years beginning after September 23, 2010, six months after enactment of PPACA, (plan years beginning January 1, for calendar year plans), all group health plans, including grandfathered plans, must comply with the following new benefit mandates:

- Eliminate lifetime limits
- Restrict annual limits on the dollar value of "essential health benefits"
- Provide coverage to children until they turn age 26 (in the case of a grandfathered plan, only if not otherwise eligible for coverage under another group health plan)

- Eliminate preexisting condition limits or exclusions for children up to age 19
- Rescind coverage only for fraud or intentional misrepresentation
- Insured plans must rebate premiums if less than 85% of premium revenue is spent on clinical services
- Health FSA, HSA, HRA may no longer reimburse non-prescription drugs (effective January 1, 2011, regardless of plan year)

For plan years beginning after September 23, 2010, non-grandfathered plans must also comply with the following new requirements:

- Cover preventive health care screenings without cost sharing
- Cover immunizations without cost sharing
- Establish claims appeal rights including external review process
- Implement case management and wellness programs
- Cover certain clinical trial treatments
- Expand choice of primary care provider
- Permit emergency and OB/GYN services without pre-authorization
- Permit non-network emergency room visits on the same basis as in-network emergency room visits
- Fully insured plans may no longer discriminate in favor of highly compensated employees (already a requirement of self-insured plans)

Additional requirements that go into effect on a **delayed basis** in the coming years for both grandfathered and non-grandfathered plans include:

#### 2012

- Distribution of uniform summary of benefits, beginning no later than 2012

#### 2013

- Contributions to health FSA limited to \$2,500, beginning in 2013

#### 2014

- Eliminate any annual benefit limit
- Eliminate all pre-existing condition limitations or exclusions
- Eliminate any waiting period in excess of 90 days
- Provide coverage of children up to age 26, regardless of eligibility for other group health coverage

The Department of Labor's Employee Benefits Security Administration posted the following information related to grandfathered health plans under the Affordable Care Act:

Interim Final Regulation – [http://www.federalregister.gov/OFRUpload/OFRData/2010-14488\\_PI.pdf](http://www.federalregister.gov/OFRUpload/OFRData/2010-14488_PI.pdf)

Fact Sheet – [http://www.healthreform.gov/newsroom/keeping\\_the\\_health\\_plan\\_you\\_have.html](http://www.healthreform.gov/newsroom/keeping_the_health_plan_you_have.html)

FAQs – <http://healthreform.gov/about/grandfathering.html>

LSG Insurance Partners will help advise you, the plan sponsor, in the assessment of the overall impact of these new requirements and the extent to which you wish to retain your plan's grandfathered status. As your partner, we are working with the medical carriers to determine exactly how and when each will be implementing all of the PPACA requirements. We anticipate that renewals will be delayed due to the significant impact of PPACA and the relatively short amount of time the carriers will have to prepare for renewals beginning October 1, 2010, (or January 1, 2011 for calendar year plans). We will continue to evaluate the impact of healthcare reform and advise you accordingly.

Yours truly,

#### **LSG Insurance Partners**

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