

November 2010

## Grandfather Rules Changed to Allow Change in Carrier/Policies

The federal agencies have released an [amendment](#) to the previously issued [rules](#) implementing the “grandfather” provisions of the Patient Protection and Affordable Care Act (PPACA). Under these “grandfathered” rules, group health plans existing on the date of enactment of the PPACA (March 23, 2010) are not required to comply with certain requirements (for example, the requirement for coverage of preventive care at no cost to the participant or insured). Under the amendment, group health plans can change health insurance carriers without losing their status as a grandfathered health plan as long as the plans do not make any other changes that result in significant cost increases, a reduction in benefits, or other changes described in the original grandfather rule. The agencies also issued a [fact sheet](#) along with the amendment.

Previously, one of the ways an employer group health plan could lose its grandfather status was if the employer changed issuers – switching from one insurance company to another. The original regulation only allowed self-funded plans to change third-party administrators (TPAs) without necessarily losing their grandfathered plan status. The new amendment allows all group health plans to switch insurance companies and shop for the same coverage at a lower cost while maintaining their grandfathered status, so long as the structure of the coverage doesn’t violate one of the other rules for maintaining grandfathered plan status.

**Why did the agencies make this change?** The federal agencies received many comments on the provision in the original grandfather rule which stated that a group health plan would relinquish grandfather status if it changed issuers or policies. This change was made in response to those comments for the following reasons:

- A group health plan may need to make administrative changes that don’t affect the benefits or costs of a plan. For example, an insurer may stop offering coverage in a market. Or a company may change hands. In those cases, the employer can maintain grandfathered status for their employee’s plan under this amendment.
- The original provision could have the inadvertent effect of interfering with health care cost containment. If an employer has to stay with the same insurance company to keep the benefits of having a grandfathered plan, the insurance company has undue and unfair leverage in negotiating the price of coverage renewals. Allowing employers to shop around can help keep costs down while ensuring individuals can keep the coverage they have.
- Some employers buy coverage from insurance companies; others “self-insure,” meaning that they pay claims themselves but usually hire a third-party administrator (TPA) to handle the paperwork. Usually only large companies can self-insure. Before this amendment, self-

insured plans could change the company hired to handle the paperwork without losing grandfathered status as long as the benefits and costs of the plan stayed the same. An employer that just changed insurance companies while maintaining the same benefits under their plan could not do this. Under this amendment, all employers have the flexibility to keep their grandfathered plan but change insurance company or third-party administrator.

**Prospective effective date.** The amendment applies to changes to coverage that are effective on or after the November 15, 2010 amendment effective date. The amendment does not apply retroactively to changes to coverage that were effective before this date. For this purpose, the date the new coverage becomes effective is the operative date, not the date a contract for a new policy, certificate, or contract of insurance is entered into. For example, if a plan enters into an insurer agreement on September 28, 2010 for a new policy to be effective on January 1, 2011, then January 1, 2011 is the new effective date of the policy and the relevant date for purposes of determining the application of the amendment. If, on the other hand, the plan entered into an agreement with an issuer on July 1, 2010 for a new policy to be effective on September 1, 2010, then the amendment would not apply and the plan would have ceased to be a grandfathered health plan. The agencies have invited comments (by December 17) on the prospective effective date of the rule and how it affects plans with different plan years.

**Notice and Documentation Reminder.** To maintain its status as a grandfathered health plan, a group health plan that enters into a new policy, certificate, or contract of insurance must provide to the new health insurance issuer (and the new health insurance issuer must require) documentation of plan terms (including benefits, cost sharing, employer contributions, and annual limits) under the prior health coverage sufficient to determine whether any change is being made that would cause the plan to lose its grandfathered health coverage status. The documentation may include a copy of the policy or summary plan description. Whenever a summary of the benefits under the plan is provided to participants, a grandfathered plan must also include a statement that the plan acknowledges it is a grandfathered health plan.

Our goal is to assist our clients in understanding the complex reform regulations of the PPACA. To keep you up to date on the new rules, Conner Strong hosts educational webinars for employers.

**On December 1 you are invited to join us from 2pm - 3pm for *National Health Insurance Reform: Where Are We Now?*** Click [here](#) to register.

Employers are advised to continue to monitor health reform developments. Should you have questions about this or any aspect of federal health insurance reform, contact your Conner Strong account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong, visit our online [Resource Center](#).

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