



DATE: November 18, 2010
TO: Our Valued Client Partners & Friends
FROM: HIB Account Team
RE: **LEGISLATIVE UPDATE 2010-23:**
Health Care Reform: Feds Issue Amendment to Grandfather Rules

We are pleased to bring you our **Legislative Update 2010-23: Health Care Reform: Feds Issue Amendment to Grandfather Rules**. This update provides details the updated Grandfather Rules under federal Health Care Reform. As always, please feel free to contact your HIB Account Team for assistance.

HEALTH CARE REFORM: FEDS ISSUE AMENDMENT TO GRANDFATHER RULES

As foreshadowed by its FAQ on September 20, 2010, the Health Care Reform (HCR) agency triumvirate of the Departments of Treasury, Labor, and Health and Human Services (the Agencies) issued an [Amendment](#) to the HCR Grandfather Rules to allow group health plan sponsors to change insurance carriers and maintain grandfathered status. The Agencies will publish its Amendment in the Federal Register on November 17, 2010.

THE CHANGE

Plan sponsors of insured group health plans may change insurance carriers and remain grandfathered as long as they meet the following conditions:

1. The effective date of the new policy/plan is after November 17, 2010 (e.g. January 1, 2011);
2. The plan design of the new plan when compared to the plan in effect on March 23, 2010 does not violate any of the remaining rules set forth in the original Interim Final Rule on grandfathering; and,
3. The plan sponsor provides the successor carrier with complete information regarding the plan it is replacing, in sufficient detail to determine whether any fatal change described in the Interim Final Rule (i.e. the six fatal changes) is being made.

DISCUSSION

1. **Why the Change.** It appears that the Agencies have identified an inconsistent treatment between insured group health plans and self-insured group health plans. The self-insured plans can change third party administrators without losing grandfathered status as long as the benefits and costs remain the same. Commenters also pointed out that some insurance carriers may be withdrawing from the market or altering their plans in ways that would affect the grandfathered status of their group health plan products. Furthermore, the Agencies noted that the initial rule would impede the ability of a plan sponsor to negotiate pricing for its policy renewals, thus interfering with the health care cost containment which would result from marketplace competition.
2. **No Retroactivity.** The Amendment states explicitly that it does not apply to changes in group health carriers/coverage when the plan is effective prior to November 17, 2010. If the plan renews on October 1, 2010, for example, and the plan sponsor switched insurance carriers, the Amendment will not undo the loss of grandfathered status.
3. **Caution.** A number of plan sponsors, faced with rising health care costs, are opting to implement high deductible health plans (HDHPs). By replacing a low deductible/coinsurance plan with the HDHP, the plan will still lose grandfathered status since it violates the change in coinsurance rules. Some will argue that as a part of the implementation of the HDHP, an employer's maximum permissible contribution to a Health Savings Account leaves the plan participant in the same place as before the implementation of the HDHP. Unfortunately, that is not the Agencies view.



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4. **Documentation Requirement.** The Amendment also requires the new carrier to obtain plan documentation sufficient enough to determine the continued grandfathered status of the group health plan. This documentation must include benefit descriptions, contribution requirements and the annual limits for the previous plan.
5. **Separate Benefit Packages.** The Amendment also restates that grandfathered status is determined on a benefit package by package basis. The plan sponsor may change carriers for its HMO plan without losing grandfathered status, but may lose grandfathered status on its Point of Service (POS) plan if the POS plan benefits and costs do not conform to the six grandfather rules, even though the carrier remains the same on the POS.
6. **Grandfathered Status.** The rules still require that the plan sponsor provide the Grandfathered Status Notice when distributing benefit materials (e.g. SPDs, enrollment materials, etc.).

The Amendment itself is an interim rule. The Agencies reserved the right to provide even more guidance as needed on a plan's grandfathered status. We encourage plan sponsors to view these grandfathered status rules to be as written and as modified. Plan sponsors must be able to demonstrate good faith efforts at compliance. We will continue to provide you with information on HCR matters as they develop.

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