

Health Care Reform
Grandfathering – let's assume the worst

The grandfather regulations are out; by now you have read many excellent summaries. However, let's look at grandfathering from a slightly different perspective – assume the worst will happen, you lose your grandfather status, either knowingly or unknowingly; what does it really mean? (In a previous ErisaALERT we discussed the Health Care Reform provisions applicable to all health plans, both grandfathered and not.) This ErisaALERT will only focus on applicable provisions up to January 1, 2014 for non collectively bargained plans.

Effective for plan years beginning on or after September 23, 2010	
Dependent coverage	Extend dependent coverage until age 26 regardless of whether the dependent has the ability to elect employment based coverage
Patient protection	No referral required for OB/GYN Designate primary care provider for participant as well as one for pediatrics
First dollar coverage for preventative services	Must provide first dollar coverage for preventive services as provided in various government recommendations
Emergency service	Cover emergency services without prior authorization and out of network expenses covered same as in-network
Appeals process	Basically establishes an external claims procedure; follow NAIC (National Association of Insurance Commissioners) rules.
§105(h) nondiscrimination rules	Insured health plans subject to §105(h) nondiscrimination rules
Annual report regarding Quality of care	Group health plans must provide an annual report to participants at open enrollment and to HHS; HHS to develop reporting requirements by 3/23/2012 Reports will be posted on the internet
Guaranteed renewability	Issuer must accept every employer and individual and must renew or continue in force group health plan coverage
Provisions effective January 1, 2013	
Health care Exchanges	Commencing March 1, 2013, Employer must provide written notice to employees regarding Exchanges
Provisions effective January 1, 2014	
Reports to the IRS	Employers must provide information about employees who receive minimum essential coverage; Large employers must file a report with the IRS certifying whether the employer offers FTEs the opportunity to enroll as well as other information

Grandfathering – let's think about it.

Dependent Coverage – anecdotal articles indicate that adding dependent coverage, whether grandfathered or not, will likely result in an average 1.5% premium increase; the question to consider is what will grandfathering save you given that you may, for years prior to 2014, have to implement an administrative procedure to verify whether or not a dependent has employment based coverage available.

Patient Protection – potentially no or minimum cost; is this really a big deal?

First Dollar Coverage for Preventative Services – not an issue if your plan already provides this; will require some number crunching if your plan doesn't. You will have to weigh the cost of implementing this provision vs the cost of foregoing the provision and losing grandfathered status.

Emergency Services – do some number crunching knowing that you probably can't predict emergencies precisely.

Appeals Process – may be a big ticket item if the external reviewer disagrees with you and your current claims adjudicator; may be hard to predict cost impact. However, for insured plans many states already require an independent review of denied service.

§105(h) Nondiscrimination Rules – could be a big deal if you are insured and discriminate in favor of highly compensated employees; you could be faced with providing all employees the same benefits; developing benefit coverage that will satisfy the nondiscrimination rules and potentially offering executives something more (don't forget the cafeteria plan rules) or providing executives supplemental benefits outside of the plan.

Annual Report Regarding Quality of Care – we can worry about this later when the rules are issued in 2012.

Guaranteed Renewability – not sure what this means for self-insured plans; seems to apply more to the issuer rather than the plan sponsor

Provisions Effective in 2013 and 2014 – things may change, good to keep in mind, but not sure it is worth the effort to focus on this year.

If you lose grandfathered status, what do you avoid?

If you lose grandfathering, you will not have to, among other things:

- Include a notice with your plan communication material which implies you are depriving employees of certain benefits
- Maintain documentation of your plan as it existed on 3/23/2010 for perpetuity
- Calculate the impact of certain benefit changes (increasing copayments, increase cost sharing using a formulae contained in the regulations)
- Postpone or rework plan changes for the coming year

Bottom Line

The government estimates that a large percentage of employer sponsored plans (50% - 80%) will lose their grandfathered status by 2013. Each employer will have to decide based on their own facts and circumstances what makes the most sense for them.

Disclaimer: This material is for the sole purpose of providing general information and does not under any circumstances constitute legal advice and should not be used as a substitute for legal advice. You should seek the advice of counsel when applying the requirements to your plan. For more information on this ErisaALERT contact us by phone at 610-524-5351 and ask for Mary Andersen or 973-994-7539 and ask for Theresa Borzelli.