SITZMANN ▪ MORRIS ▪ LAVIS

Employee Benefits | Life Insurance | Retirement Planning

TO: Clients of Sitzmann Morris & Lavis Inc.

RE: Grandfathered Plans' Interim Final Regulations Amended

Background:

The Patient Protection and Affordable Care Act (PPACA) provides that certain group health plans existing as of March 23, 2010 are "grandfathered" and, therefore, not subject to certain provisions of PPACA. On June 16, 2010, we reported in an *SML Update* on the Grandfathered Plan Interim Final Regulations written by the Department of Health and Human Services (HHS), Department of Labor (DOL) and the Internal Revenue Service (IRS).

The Amendment to these Interim Final Regulations has now been released and will be published in the Federal Register on November 17, 2010. This is in response to many comments that the Department received on the topic of changing issuers or policies.

Key Provisions:

Allowed to switch insurance companies: The amendment allows all group health plans to switch insurance companies and maintain their grandfathered status so long as:

- the structure of the new coverage does not violate one of the other rules for maintaining grandfathered plan status (listed below);
- the change (policy renewal) is effective on or after November 17, 2010; and
- the plan provides to the new health insurance issuer documentation of plan terms under the prior health coverage sufficient to determine whether any coverage change is being made which would cause loss of status.

  The documentation would include benefits, cost sharing, employer contributions and annual limits and could include a copy of the policy or summary plan description.

As a reminder, here are the actions which will result in loss of grandfathered status:

a. Eliminating all or substantially all benefits to diagnose or treat a condition
b. Any increase in a percentage cost-sharing arrangement (e.g. increasing 20% co-insurance to 30%)
c. Raising fixed amount cost-sharing greater than the maximum % increase. The maximum % increase is defined as medical inflation since 3/23/10 + 15%. Examples of cost sharing include deductibles and out of pocket limits.

d. Raising fixed amount copayments by an amount that exceeds the greater of (A) the maximum % increase or (B) $5 increased by medical inflation.
e. Lowering employer contributions towards any tier of coverage by more than 5% from that in effect on 3/23/10. The contribution rate is defined as the % made by the employer compared to the total cost of coverage. For plans that on 3/23/10 made contributions based on a formula such as hours worked, the rate is the formula.
f. Mergers or acquisitions for the principal purpose of covering new individuals in a grandfathered plan
g. Transferring employees from one policy to another if the move to the remaining policy results in any of the above changes. For example, an employer maintains two medical policies and terminates one due to high costs. If the remaining policy has a higher cost-sharing arrangement than the terminated plan the remaining plan loses its grandfather status. There is an exception to this if there is a "bona fide employment-based reason" to transfer the employees. Closure of a location and cancellation of the coverage provided to those employees being transferred to another location would be a bona fide employment-based reason to transfer employees.

A Grandfathered Plan may do the following and still be considered grandfathered:

a. Add new employees
b. Enroll new dependents
c. Disenroll some or all employees as long as plan has continually covered someone since 3/23/10
d. Make changes to comply with PPACA and state laws
e. Change premiums
f. Change third party administrators for self-insured plans
g. Change insurance companies

What's Next

For most employers this amendment will have no impact on their ability to retain grandfathered status. All small group policies, and large group covering up to 125 lives, have set benefit designs. This means that the employer cannot make changes to the policies being offered by the insurance company. A line by line comparison of policies is likely to reveal some difference in benefits covered and cost-sharing. For example, the annual deductible might be the same, but the number of physical therapy visits is different.

Employers with large group policies of 125 covered lives, and sometimes more, can negotiate with the insurance company to change the policy to ensure all the benefits and levels of coverage do not trigger a loss of grandfathered status.

The Departments expect that this amendment will result in only a small increase in the number of plans retaining grandfathered status.

As always, contact your SML Account team if you have any questions.