



## MEMO

**To: Allegiance Companies' Clients**

**Date: June 15, 2010**

### **Interim Final Regulations on Grandfathered Health Plan Status**

**Grandfathered Health Plan Status under PPACA Interim Final Rules recently issued. These regulations have a profound impact on grandfathered plans and appear to impose restrictions beyond the language of the legislation. Allegiance will be providing additional analysis in the coming days.**

Patient Protection and Affordable Care Act (PPACA): Departments of Labor, Treasury and Health and Human Services Jointly Release Interim Final Rules on Allowable Plan Modifications by Grandfathered Plans.

An interim final rule detailing how plan modifications will affect a plan's grandfathered status was released on Monday, June 14, 2010. It is scheduled to be published in the Federal Register on Thursday, June 17, 2010, with a 60-day comment period to follow. These rules will be effective almost immediately. Comments submitted may have no impact on changes to the rules. Plans should familiarize themselves with the requirements so as to be able to consider what changes in plan design, etc., will have on grandfathered status.

#### **Background on Grandfathered Plans:**

A group health plan, either insured or self-funded, that was in existence on March 23, 2010, is a grandfathered plan under PPACA. Grandfathered plans are only subject to certain provisions of the Act, while being grandfathered allows the plan to not have to comply with some PPACA mandates. Family members, new hires and late enrollees added to or dropped from the plan will not negate a plan's grandfather status.

#### **Advantage of Grandfathered Status:**

These plans are not required to comply with a few (mostly minor) mandates required by PPACA. For 2010 and

2011, the only mandate this avoids of any consequence for Allegiance plans and insurance policies is the mandate to provide first dollar 100% preventive care. Even if a plan is grandfathered, starting in the 2011 plan year it will still have to comply with the mandates for no pre-existing exclusions for children under age 19, no lifetime and almost no annual maximums, coverage of dependent children up to age 26 even if they are married, and several other minor administrative requirements.

### **Final Interim Rule:**

The regulations seem to be written to ensure that no plan will be able to keep its grandfathered status unless it remains almost exactly as it was on March 23, 2010. The details still need to be analyzed but a quick read indicates the following: almost any change in benefits including changes in co-pay percentages, changes in deductibles or out-of-pockets if they exceed the medical consumer price index, changes in fixed dollar copays that exceed \$10, any reduction in benefits including elimination of a plan option if there is more than one option, changes that reduce or restrict eligibility in any way, and even any reduction in the amount the employer contributes towards coverage will cause a plan to lose its grandfathered status. In addition, for insured plans, in many cases it appears that even a change in insurance carrier at renewal may cause the loss of grandfathered status.

The regulations provide that in order to maintain status as a grandfathered health plan, a plan or health insurance coverage must include a statement, in any plan materials provided to participants or beneficiaries describing the benefits provided under the plan or health insurance coverage, that the plan or health insurance coverage believes it is a grandfathered health plan. Model language has been provided in the interim final regulations that can be used to satisfy this disclosure requirement.

Under these interim final regulations, to maintain status as a grandfathered health plan, a plan or issuer must also maintain records documenting the terms of the plan or health insurance coverage that were in effect on March 23, 2010, and any other documents necessary to verify, explain, or clarify its status as a grandfathered health plan. In addition, the plan or issuer must make such records available for examination.

The interim final regulations limit the extent to which plans and issuers can increase the fixed-amount and the percentage cost-sharing requirements that are imposed with respect to individuals when receiving items and services. These interim final regulations include a standard for employer contribution changes that would result in cessation of grandfather status. Under this standard, changes in the amount an employer contributes toward an employee's or dependent's coverage will cause a plan to lose grandfathered status.

Changes to levels of coinsurance will end a plan's grandfathered status, but changes to fixed amounts of cost sharing including fixed amount co-payments, deductibles and out-of-pocket maximums, consistent with and not exceeding with medical inflation, will not.

The interim final regulations include a standard for employer contribution changes that would result in cessation of grandfather status. The interim final regulations would limit the ability of plan-sponsors to decrease its portion of the premium or other fixed cost of coverage under a group health plan or group health insurance coverage relative to the portion of such cost paid by employees. In the case of a self-insured plan, contributions by an employer or employee organization are calculated by subtracting the employee contributions towards the total cost of coverage from the total cost of coverage.

A plan or health insurance coverage will lose its grandfathered status if the plan or health insurance coverage makes certain specified changes. Generally, these are changes that significantly decrease the benefits covered, materially increase cost-sharing by participants in ways that might discourage covered individuals from seeking needed treatment, or substantially increase the cost of coverage borne by participants.

The elimination of all or substantially all benefits to diagnose or treat a particular condition will cause a plan or health insurance coverage to cease to be a grandfathered health plan.

You can view the complete interim final regulations at <http://www.dol.gov/ebsa/healthreform/>.

### **What You Can Do**

Take advantage of the opportunity to submit written comments to the regulators. How and where to submit comments can be found by clicking on the above link. You may also want to contact the Montana Congressional Delegation. Senator Max Baucus can be contacted at 511 Hart Senate Office Building, Washington, D.C. 20510-2602 or email [max@baucus.senate.gov](mailto:max@baucus.senate.gov). Senator Jon Tester can be contacted at 724 Hart Senate Office Building, Washington, D.C. 20510-2602 or email [senator@tester.senate.gov](mailto:senator@tester.senate.gov). Congressman Denny Rehberg can be reached at 2448 Rayburn House Office Building, Washington, D.C. 20515 or email can be found at his website which is [www.house.gov/rehberg/](http://www.house.gov/rehberg/).

We hope you find this information helpful in guiding your compliance with health care reform.

**Thank you!**