



September 2010

DOL Posts Additional Guidance on Grandfather Rules

The DOL posted additional guidance on the determination of grandfathered health plan status under the Patient Protection and Affordable Care Act (PPACA) on its website on September 20, 2010 in the form of five FAQs.

The regulators response to question #6 suggests that prior guidance on carrier changes may be modified in the near future. Under prior guidance any change in the insurance carrier under an insured plan resulted in the loss of grandfathered status. The actual Q&A is:

Q6: Will the Departments change the current rules so that a grandfathered group health plan that changes carriers does not relinquish its status as a grandfathered health plan?

The Departments anticipate that they will shortly address the circumstances under which grandfathered group health plans may change carriers without relinquishing their status as grandfathered health plans.

In FAQ #5, the regulators say that they are receiving public comments on prior guidance and may issue further guidance as those comments are evaluated. Final regulations (on recently issued **Interim** Final Regulations) are expected to be published beginning next year.

The three remaining the FAQs (#2-4) relating to grandfather status provide more detailed guidance on contribution changes.

Question #2 provides a procedure for carriers and group health plans to communicate contribution changes which may affect an insured plan's grandfathered status. Until final regulations are issued, the regulators will not treat an otherwise grandfathered plan as non-grandfathered as long as:

- At renewal, the carrier requires the employer to make a representation regarding its contribution rate on March 23, 2010 and at renewal (e.g., the employer paid 80% of the cost on March 23, 2010 and will continue to pay 80% of the cost for the upcoming plan year).
- The carrier's contracts and certificates contain a prominent notice that the employer is required to notify the carrier of any change in its contribution rate.

Plans and policies that renew before January 1, 2011 and take these two steps before January 1 will continue to be grandfathered (assuming other changes such as reduced coinsurance does not cause the loss of grandfathered status).

Questions #3 and 4 provide guidance on contribution changes in multiemployer plans where the plan may not know the employer's contribution rate or the plan has a fixed-dollar employee contribution.

A complete copy of the FAQs can be obtained at: <http://www.dol.gov/ebsa/faqs/faq-aca.html>.

GBS is committed to helping you effectively navigate this significant change for the benefit of your organization, your employees and their families. Please contact your Gallagher Representative with any questions.

The intent of this analysis is to provide you with general information regarding the provisions of current healthcare reform legislation. It does not necessarily fully address all your organization's specific issues. It should not be construed as, nor is it intended to provide, legal advice. Your organization's general counsel or an attorney who specializes in this practice area should address questions regarding specific issues.