

HEALTH REFORM IMPACT

What you need to know NOW

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

Grandfathered Health Plans – Significant Exemptions From Health Reform Legislation

April 7, 2010

Under the recently enacted health reform legislation,¹ group health plans in effect on March 23, 2010 are treated differently (more favorably) than group health plans established after that date. These existing plans are referred to as “grandfathered health plans” and are provided relief (either in the form of a permanent exemption or a delayed effective date) from many of the more highly publicized and costly provisions of the reform law. Accordingly, in assessing the impact of health reform on your group health plan, it is vital to distinguish between provisions that are or are not applicable by reason of the grandfathering rules. This requires identification of your grandfathered health plans and awareness of what is needed to maintain that grandfathered status.

The determination of what is a grandfathered health plan - and what actions a grandfathered plan may take without jeopardizing the exemption – is the source of much confusion. Generally, the new health reform legislation defines a grandfathered health plan as a group health plan in effect on March 23, 2010. Thus, a simple inventory of health plans in existence on that date can identify potential grandfathered plans.

Beyond this definition, there is little guidance as to how a plan’s grandfathered status is maintained or lost. What we do know is that grandfathered status will not be spoiled by: (i) adding new employees and their families to the group health plan; (ii) allowing employees covered under the group health plan to add family members (provided the plan terms allowed for this dependent coverage on March 23, 2010); or (iii) renewing an insurance policy after March 23, 2010 (for fully insured plans).

Beyond these limited actions, the law will remain unclear until additional guidance is issued. Conceivably, a material change to a health plan’s design after March 23, 2010 could impact the plan’s grandfathered status. For example, if a plan is amended to change the eligibility requirements or to alter the benefits available under the plan, the grandfathered status may be jeopardized. Similarly, while the Act specifically allows a grandfathered health plan to renew insurance coverage after March 23, 2010, a change in insurers (including a change in policy terms) could endanger the grandfathered status. Further, while the Act addresses the treatment of “new

¹ The Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (collectively, the “Act”) was signed into law, in final form, on March 30, 2010.

employees," it does not address the treatment of individuals who were employed on March 23, 2010 but not then enrolled in the group health plan. Until further guidance is issued, allowing such persons to enroll for plan coverage after March 23, 2010 might impact a plan's grandfathered status, although this result seems unlikely.

Special rules also apply to collectively bargained plans that were in effect on March 23, 2010. In general, these plans are not subject to the Act until the last of the underlying collective bargaining agreements relating to coverage terminates. However, a plan may be amended, in a manner consistent with the terms of the collective bargaining agreement, to incorporate any of the Act's provisions, and it will not thereby become subject to other provisions of the Act. Thus, making voluntary amendments to a collectively bargained plan to incorporate any of the new legal requirements will not affect the special effective date otherwise applicable to the plan.

It is worth noting that a group health plan's status as grandfathered (or not) applies on an all-or-nothing basis. And although grandfathered health plans are exempt (in some cases only temporarily) from certain provisions of the Act, there is no time horizon for continued application of grandfathered treatment. As a result, there is no set date on which non-collectively bargained grandfathered plans will lose their special treatment.

Until further guidance is issued, employers should be cautious and seek qualified legal advice before making material modifications or changes to their group health plans.

In a separate Health Reform IMPACT Alert to be issued this week, we will identify significant health reform changes that do apply to grandfathered health plans within the next twelve (12) months and will require your immediate attention.

If you have questions regarding the information in this client alert, or with respect to other provisions of the health reform legislation as it relates to your employee benefits plans, please contact any of the attorneys in our Employee Benefits Practice Group listed below.

Also, please [click here](#) to visit our special web page for Health Reform IMPACT.

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