

Interim Final Rules for Group Health Plan and Health Insurance Coverage relating to status as a Grandfathered Health Plan under the Patient Protection Unaffordable Act

RN 1210-AB42

Comments:

It is recommended that the effective date/benchmark when determining whether an employer made a “change” as defined in the final rules pertaining to benefit changes, employer contribution change and health insurance carrier changes to 6 months after the enactment date to September 23, 2010-versus the enactment date of March 23, 2010, since plan sponsors made these changes between April 1 and June 1 plan years, without knowing final rules of the grandfathering until , now -June 14. 2010.

Retroactively punishing employer groups who did not know the rules is not fair game, especially during a recession and knowing the employers are under substantial pressure from a cost standpoint and making changes to benefits and contributions due their financial situations.

Give employer groups an opportunity to comply. For fully –insured contracts you cannot go back in time and change your contracts if you made benefit or insurance carrier changes back in April, post enactment, and remedy their plan as suggested to maintain your grandfathering status.

Example 1: Assume an employer changes health plan carrier, (i.e. from Humana to Aetna) on April 1, 2010 to help reduce health plan costs – under these rules the employer would lose grandfathering.

Recommendation: Give employer groups until September 23rd, and base changes on that date and go forward, and the benefits, carrier and contribution strategy in place on the date will be considered the new benchmark when verifying /comparing grandfathering status. Again, the remedy suggested in the final rules is not allowed for fully insured contracts. Having a plan on March 23, 2010 is acceptable, but the plan rules/changes is not.

Example 2: Consider the recession; employers are struggling to pay premium – employer was paying 100% for single coverage prior to their renewal date, April 1, 2010. After PPACA, employer changes the contribution to 90% single. Still very generous, but under the final rules, this employer will be punished and lose grandfathering.

Example 3: Employer offers HMO and POS coverage, does not make any changes to those benefits after enactment date, on April 1 offers a QHDHP / HSA compatible as an option, and contributes to the HSA; this employer may or may not lose grandfathering. The employer contribution to the High Option HMO stayed the same and is still being offered—will this plan lose grandfathering? Employers should not lose grandfathering because they are offering another plan option to their employees as a choice and have not taken anything away.

Example 4: Many of our clients on April, May and June renewals offered QHDHP for the first time this year as a plan option. Most of our clients put money into the HSA on behalf of their employees, and made no employer contribution change to the high option plan, and simply added the QHDHP plan as an option. The pay roll deductions for QHDHP are substantially lower than the HMO High option plan. When adding the HSA employer contribution and the payroll deduction savings on an annual basis, the plan is actually saving the employee money on an aggregate basis, but the deductible is \$2,000/\$4,000 100% coinsurance. How will this be measured? There is more to consider than copays and deductibles when looking at the total cost of the plan. This strategy has not been analyzed and needs to be.

Example:

- If an employee has to pay \$5,000 per year for premium/payroll deductions for his family for a high option health plan with low copays/deductibles as described in the grandfathering rules;
- And on the other hand this same employee now has a plan option a QHDHP he can pay only \$2,000 for his family and his premium/payroll deduction on the HDHP saves \$3,000 in premium when compared to the high option HMO. And he receives a contribution from his employer in his HAS of \$500—assume the deductible for his family is \$4k max out of pocket is \$4k but he is pocketing \$3,000 in premium savings and getting \$1,000 from his employer....

Which plan is better? There are creative benefit plan/designs and contribution strategies that are being implemented and the new rules are just too simplistic and will stifle cost management techniques that are working to control health plan costs. Telling employers they cannot increase their copays so they can maintain their grandfathering status is short sighted and dare I say ignorant. Employers and their consultants spend many months creating benefit strategies and contribution strategies that will help bend their cost curve, while maintaining a satisfied work force. The new rules are going back in time instead of embracing what is working from a cost management standpoint.

The premise of giving employers an opportunity to retroactively go back and change the benefits, contribution or insurance carrier to March 23, 2010, in order to gain back their grandfathering status is not possible and will not be allowed. Fully-insured contracts will not allow this.

The only fair way to implement grandfathering is to implement the benchmark date into the future (after June 14th) not 3 months prior.

Recommendation: You must have had a plan in place on March 23rd, but if you made changes as describe in the final rule, before the final rules were effective, prior to June 14th or whenever they become final, the plan should be given a reprieve in order to comply with new rules since retroactively making changes is not allowed.

April-June, the employer should not be penalized for not knowing the rules.

As far as making a carrier change this should not be grounds for losing your grandfathering status. If this rule stands, does that mean employer groups have to stay with same carrier for ever and the day they change carriers then they lose grandfathering status?

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