

Health Plans: What's Next?

Drinker Biddle's
Health Care Reform Update
for Employee Benefit Plans

Group Health Plans May Change Insurers Without Losing Grandfathered Status

In an amendment to previously issued guidance, the new rules issued by Departments of Health and Human Services, Labor and the Treasury (the Departments) provide that an insured group health plan does not lose its "grandfathered" status merely by changing issuers or insurance contracts. Although the Patient Protection and Affordable Care Act and the related Health Care and Education Reconciliation Act of 2010 (together, the Health Care Reform Law) generally apply to all group health plans and health insurance coverage going forward, certain plans that were in effect on March 23, 2010, may be "grandfathered" and exempt from a number of the new requirements. The Departments issued regulations on June 17, 2010, that outlined the steps that group health plans must take to maintain their grandfathered status. Under the June 2010 guidance, if a fully insured group health plan changed insurance carriers or entered into a new policy, certificate or contract after March 23, 2010, the plan automatically lost its grandfathered status.

Drinker Biddle Note: For a complete discussion of the June 2010 guidance, please click [here](#) to view the client alert that Drinker Biddle issued in June: "Transitioning to Health Care Reform: So You Think You'd Like Your Plan To Be Grandfathered..."

The amendment to the June 2010 guidance provides welcome relief to fully insured group health plans. Under the modified regulations, a group health plan does not cease to be a grandfathered plan merely

because the plan enters into a new policy, certificate or contract of insurance after March 23, 2010. To retain its grandfathered status, the insured health plan must continue to comply fully with the other grandfathered plan rules as set forth in the June 2010 guidance. Moreover, the group health plan must provide to the new health insurance issuer documentation of the plan terms under the prior coverage to determine whether any changes are being made that would jeopardize the plan's grandfathered status.

Drinker Biddle Note: The documentation provided to the new issuer should include the plan terms relating to benefits, cost sharing, employer contributions and annual limits.

Drinker Biddle Note: The new guidance does not affect individual insurance policies.

The amendment provides prospective relief only; it only applies to changes to group health insurance coverage that are effective on or after November 15, 2010. The amendment does not apply retroactively to changes to group health insurance coverage that were effective before November 15.

Drinker Biddle Note: For this purpose, new coverage becomes effective on the date a contract becomes operative (not on the date it is entered into). For example, if a plan enters into an agreement with an issuer on September 28, 2010, for a new policy with coverage to be effective on January 1, 2011, then January 1, 2011, is the relevant date for determining the application of the amendment to the grandfathered rules and this plan would not lose grandfather status merely because of the change in insurers. If, however, the plan entered into an agreement with an issuer on July 1, 2010, for a new policy with coverage to be effective on September 1, 2010, then the amendment to the grandfathered rules would not apply and the plan would cease to be a grandfathered plan.

Employee Benefits & Executive Compensation Practice Group

If you would like assistance in determining how the grandfathered plan guidance may impact your group health plan, please contact a member of the Drinker Biddle Employee Benefits and Executive Compensation Team.

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