



AFFORDABLE CARE ACT: NEW GRANDFATHERED HEALTH PLAN GUIDANCE

On June 17, 2010, the Departments of Health and Human Services, Treasury, and Labor (the “Departments”) jointly published [Interim and Final Regulations](#) (the “grandfathered health plan rules”) providing extensive guidance on “grandfathered health plan” status under the health care reforms mandated by the Patient Protection and Affordable Care Act (the “Affordable Care Act”). Grandfathered health plans are exempt from certain health care reform mandates, and the regulations help sponsors determine whether their plans are grandfathered.

After receiving numerous comments, the Departments amended the grandfather health plan rules on November 15, 2010, to permit employers to change insurers without affecting the grandfathered status of the employer’s group health plan. The Departments made this change to the grandfathered health plan rules to give insured group health plans the same flexibility afforded to self-insured group health plans, prevent insurance companies from having undue and unfair leverage in negotiating the price of coverage renewals, and provide relief where an insurer stops offering coverage in a market.

Effect of a Change in Insurer on Grandfathered Status

Prior to amendment, the grandfathered health plan rules provided that if an employer entered into a new policy, certificate, or contract of insurance after March 23, 2010, the employer’s group health plan automatically lost its grandfathered status. Under the amended grandfathered health plan rules (available [here](#)), an employer may enter into a new policy, certificate, or contract of insurance for a group health plan without losing the plan’s grandfathered status, provided that the following requirements are met:

1. The change is effective on or after November 15, 2010;
2. The change in policy, certificate, or contract of insurance does not change the terms of the plan in way that would otherwise cause a loss of grandfathered status; and
3. The employer provides to the new health insurance issuer documentation of the plan terms (including benefits, cost-sharing, employer contributions, and annual limits) under the prior insurance policy sufficient for the new issuer to determine whether any change in the plan terms that would cause a loss of grandfathered status has occurred.

Special Notes: A group health plan that entered into a new policy, certificate, or contract of insurance effective before November 15, 2010 will not be grandfathered. In addition, a change in policy, certificate, or contract of insurance with respect to an individual insurance policy, as opposed to a policy insuring a group health plan, continues to cause a loss of grandfathered status.



Changes to Terms of a Plan That Continue To Cause a Loss of Grandfathered Status

As amended, the grandfathered health plan rules continue to provide that in order to preserve the status of a grandfathered health plan, employers must not undertake any of the following actions with respect to the plan after March 23, 2010:

1. Eliminate all or substantially all benefits to diagnose or treat a particular condition, including eliminating benefits for any necessary element to diagnose or treat a particular condition.
2. Increase a cost-sharing percentage, such as coinsurance.
3. Increase a fixed-amount cost-sharing, such as a deductible or out-of-pocket maximum, by more than the rate of medical inflation (to be published by the Department of Labor) plus 15%.
4. Increase a fixed-amount copayment amount by more than the greater of: (i) an amount equal to \$5 increased by the rate of medical inflation; or (ii) a percentage equal to the rate of medical inflation plus 15%.
5. Decrease the employer's contribution rate towards the cost of any tier of coverage (such as individual-only or family) for any class of similarly situated individuals by more than 5%. For insured plans, the employer's contribution rate is computed as the amount of contributions made by the employer compared to the total cost of coverage. For self-insured plans, the employer's contribution rate is calculated by subtracting the employee contributions toward the cost of coverage from the total cost of coverage.
6. Impose a new or modified annual limit on benefits, subject to the following rules:
 - i. If the plan did not impose an annual or lifetime limit on benefits on March 23, 2010, the plan will lose its grandfathered health plan status if it imposes an annual limit on benefits;
 - ii. If the plan imposed a lifetime limit on benefits but no annual limit on benefits on March 23, 2010, the plan will lose its grandfathered health plan status if the plan adopts an annual limit on benefits that is lower than the lifetime limit on benefits in effect on March 23, 2010; and
 - iii. If the plan imposed an annual limit on benefits on March 23, 2010, the plan will lose its grandfathered health plan status if the plan decreases the annual limit on benefits.

—[Timothy P. Brechtel](#), [Susan K. Chambers](#), and [B. Trevor Wilson](#)



Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

Timothy P. Brechtel

Jones Walker
201 St. Charles Avenue
New Orleans, LA 70170-5100
504.582.8236 *tel*
504.589.8236 *fax*
tbrechtel@joneswalker.com

Susan K. Chambers

Jones Walker
201 St. Charles Avenue
New Orleans, LA 70170-5100
504.582.8394 *tel*
504.589.8394 *fax*
schambers@joneswalker.com

B. Trevor Wilson

Jones Walker
Four United Plaza
8555 United Plaza Boulevard
Baton Rouge, LA 70809
225.248.2122 *tel*
225.248.3122 *fax*
twilson@joneswalker.com

Employee Benefits, ERISA & Executive Compensation

Blackman, IV, John C.
Brechtel, Timothy P.
Carlo, Ricardo X.
Chambers, Susan K.
Curran, Anita B.
Longon, Brooke L.
Martin, Edward F.

Murphy, Margaret F.
Nunes, III, Louis S.
Ramelli, Rudolph R.
Simoneaux, Kelly C.
Spencer, Hope M.
Wilson, B. Trevor

This message and any attachment hereto is subject to the privilege afforded Attorney Work Products and Attorney-Client communications.

IRS Circular 230 Disclaimer: Pursuant to Treasury guidelines, any tax advice contained in this communication does not constitute a formal opinion. Accordingly, any tax advice contained in this communication is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of avoiding penalties that may be asserted by the Internal Revenue Service.

This newsletter should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own attorney concerning your own situation and any specific legal questions you may have.

To subscribe to other E*Bulletins, visit <http://www.joneswalker.com/ecommunications.html>.