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YOU MAY WISH TO CONSIDER...

The Patient Protection and Affordable Care Act - Grandfathered Status

Interim final regulations clarifying grandfathered plan status were issued on June 17, 2010 by the Departments of Treasury, Labor and Health and Human Services. Recall that in general, a grandfathered plan is one that had participants on March 23, 2010. These regulations indicate that a plan will lose grandfathered status with respect to a "benefits package" if it does any of the following:

- Enters into a new policy, certificate or contract of insurance after March 23, 2010.
- Eliminates all or substantially all benefits to diagnose or treat a particular condition.
- Increases a percentage cost-sharing requirement (e.g., employee coinsurance) by any amount.
- Increases a fixed-amount cost-sharing requirement other than a copayment (e.g., deductible, out-of-pocket maximum) by more than medical inflation plus 15 percentage points since March 23, 2010. Medical inflation is defined as the overall medical care component of the Consumer Price Index for All Urban Consumers.
- Increases a fixed copayment by more than the greater of a) more than medical inflation plus 15 percentage points; or b) \$5, increased by medical inflation.
- Imposes an overall annual or lifetime limit on the dollar value of all benefits if the plan did not previously impose such a limit.
- Adopts an overall annual limit at a dollar value that is lower than the dollar value of the lifetime limit that was in effect on March 23, 2010 (if the plan had a lifetime limit in place at that time).
- Decreases the dollar value of the annual limit that was in effect on March 23, 2010 (if the plan imposed an annual dollar limit at that time).
- Decreases the percentage rate of subsidization of the cost of any tier of coverage by more than 5 percentage points below the percentage on March 23, 2010 (e.g., from 80% down to 74%, a 6% decrease) for plans where the contribution is based on the cost of coverage.
- Decreases its contribution amount towards the cost of any tier of coverage by more than 5% below the contribution amount for the coverage period that includes March 23, 2010 (e.g., from \$800 down to \$720, a 10% decrease) for plans where the contribution rate is based on a formula.
- Enters into a merger or acquisition where the sole purpose is to cover new individuals under a grandfathered plan.
- Transfers employees previously covered by a grandfathered plan to another grandfathered plan for non-bona fide employment-based reasons and if amendment of transferor plan to match terms of transferee plan would have resulted in loss of grandfathered status of transferor plan.

The Departments have indicated that they will take into account "good-faith" efforts to comply with a reasonable interpretation of the statutory requirements. Plans should use caution when considering design changes for the future. Plans that intend to maintain grandfathered status must maintain records that document that status and must also include a statement in any materials describing plan benefits to participants that the plan is intended to be a grandfathered plan. For more information about what requirements apply to grandfathered and non-grandfathered plans, please visit our website www.touchstoneconsulting.com.

If you wish to receive future copies of these publications via e-mail, know of someone who should be added to our mailing list, or wish to be removed from the list yourself, please e-mail us with the pertinent information at tcg@touchstoneconsulting.com.

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