

**Health Care Reform:
Grandfathered Plans – Part II**

June 2010

On June 14, 2010, regulations were issued under the Patient Protection and Affordable Care Act (PPACA) regarding the preservation and forfeiture of grandfathered health plan coverage. (See Keenan *Briefing* at http://www.keenan.com/news/brief/2010/BRF_20100618_HCRGrandfatheredPlans_KA.pdf). This *Briefing* describes those provisions of PPACA which are applicable to plans that lose their grandfathered status.

PLAN YEARS BEGINNING ON OR AFTER SEPTEMBER 23, 2010

Plans that are not grandfathered are subject to the following provisions of PPACA for plan years beginning on or after September 23, 2010:

Expanded Coverage for Adult Children

Grandfathered plans may exclude children who are eligible to enroll in another employer's plan until 2014. Conversely, plans that are not grandfathered may not exclude children who are eligible to enroll in another employer's plan.

Appeals Process

Non-grandfathered plans must have an effective appeals process for appeals of coverage determinations and claims, including a final independent external review. Enrollees may review their files and receive continued coverage pending the outcome of the appeals process.

Preventive Health Coverage

Without additional cost sharing, group health plans must provide coverage for specific preventive services, immunizations and screenings.

Patient Protections

Group health plans must operate in the following manner:

- **Selection of any Available PCP:** Participants, enrollees and beneficiaries must be permitted to designate any participating primary care provider who is available to accept such individual.
- **Emergency Services:** Emergency services will have no prior authorization requirements; services and costs will be based on in-network benefits, regardless of whether the services are provided in or out of network.

- **Access to Pediatric Care:** A physician (allopathic or osteopathic) who specializes in pediatrics may be selected by a participant as a child's primary care provider if such provider participates in the network of the plan.
- **Access to OB-Gyn:** In the case of a female participant, a group health plan may not require authorization or referral by anyone (including a primary care provider) who seeks coverage for obstetrical or gynecological care provided by a participating health care professional who specializes in obstetrics or gynecology.

Prohibition on Discrimination in Favor of Highly-Compensated Employees

Fully insured group health plans must satisfy the nondiscrimination rules of IRC §105(h) that result in the taxation of benefits and coverage that discriminate in favor of "Highly Compensated Employees."

EFFECTIVE JANUARY 1, 2012

Plans that are not grandfathered are subject to the following provisions of PPACA effective January 1, 2012:

Ensuring Quality of Care

Plans must report to the U.S. Department of Health and Human Services (HHS) and those enrolled in a plan regarding details of the plan benefits, costs and plan designs that provide incentives for improved quality.

PLAN YEARS BEGINNING ON OR AFTER JANUARY 1, 2014

Plans that are not grandfathered are subject to the following provisions of PPACA effective for the first day of the plan year beginning on or after January 1, 2014:

Coverage for Individuals Participating in Approved Clinical Trials

With respect to the treatment of cancer or other life-threatening diseases or conditions, a group health plan may not deny participation in, or impose additional conditions on coverage for, an approved clinical trial for which the individual is eligible to participate according to the trial protocols.

Provisions for Additional Information

Group Health Plans must provide the federal and state government and the public with information about claims payment policies and practices, finances, enrollment, claims denied, rating practices and cost sharing.

Nondiscrimination in Health Care

Group health plans are prohibited from discriminating against health care providers acting within the scope of their professional license and applicable state laws.

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