



## BURNING BENEFITS NEWS

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### **GRANDFATHERED AND COLLECTIVELY BARGAINED GROUP HEALTH PLANS UNDER HEALTH CARE REFORM LEGISLATION**

#### **GRANDFATHERED PLANS**

The newly enacted Patient Protection and Affordable Care Act, as amended by the Health Care and Education Affordability Reconciliation Act (collectively referred to as "PPACA") is an enormous new statute. Following our general communication practices, we aren't sending you a textbook on the subject. Rather, we will raise targeted issues as they arise.

For now, we call one urgent matter to your attention.

#### **BE CAREFUL BEFORE YOU MAKE ANY CHANGES TO YOUR GROUP HEALTH PLAN!**

PPACA imposes significant new requirements on employer-provided healthcare programs. However, PPACA excludes certain "grandfathered" plans from the requirements listed at Section B of this newsletter. (Note that grandfathered plans are not exempt from all of PPACA, but are exempt from the requirements listed at Section B.)

Although the term "grandfathered" is not clearly defined, it appears to apply to any group health plan in existence on the date of enactment (March 23, 2010). Family members and new employees can be added to the group health plan without disturbing the plan's grandfathered status, but **it's not clear whether any other changes can be made to an existing plan without forfeiting grandfathered status**. Therefore you should not make any changes to existing group health plans until you carefully weigh the consequences. We will advise you promptly when the government issues additional guidance about grandfathered status eligibility.

*The following will give you a sense of what the new legislation requires, and which requirements grandfathered plans avoid. At the end of this Burning Benefits News, you'll see a summary of key "takeaways."*

**A. The following PPACA requirements apply to ALL PLANS, both grandfathered and non-grandfathered. To be clear, these requirements will apply to ...**

- Plans in existence on March 23, 2010 which continue to be grandfathered.
- Plans in existence on March 23, 2010 which lose grandfathered status.
- Plans adopted after March 23, 2010.

**1. Effective for plan years beginning on or after September 23, 2010 (e.g., January 1, 2011 for a calendar year plan):**

Lifetime limits: Plans may not impose lifetime limits on the dollar value of benefits for any participant or beneficiary for those benefits that are deemed to be "Essential Health Benefits." ("Essential Health Benefits" are certain core benefits, such as ambulatory services, emergency services, hospitalization, maternity and newborn care, mental health and substance use disorder benefits, prescription drugs, rehabilitation services, lab services, preventative and wellness services, and pediatric services.)

Annual limits prior to 2014: Plans may set only a "restricted annual limit" (the limit awaits guidance) on Essential Health Benefits.

Prohibition on rescissions: Plans may not generally rescind health coverage for a plan participant once covered under the plan.

Preexisting condition exclusion: Group health plans may not impose any preexisting condition exclusion for enrollees under age 19. (The "other shoe drops" in 2014, when **no** preexisting condition limitations are allowed, regardless of age.)

Coverage of adult dependents to age 26: A group health plan that offers family coverage must make dependent coverage available for an adult child (regardless of marriage or student status) until the child turns age 26, provided the child is not eligible to enroll in another group health plan. Amounts spent for medical care for these adult children will not be includible in the parent's taxable income through the end of the taxable year in which the child turns age 26.

- Prior to PPACA, coverage "maxed out" at age 25, and then only for dependent students.

**2. Effective March 23, 2012:**

Uniform summary of benefits: Group health plans must provide plan participants with a uniform summary of benefits and explanation of the benefits provided by the plan, using standardized definitions, by March 23, 2012. A model summary is to be developed for use by group health plans by March 23, 2011.

**3. Effective for plan years beginning on or after January 1, 2014:**

Annual limits: Plans may not impose annual limits on the dollar value of Essential Health Benefits. (This follows the earlier prohibition on *lifetime* limits.)

Preexisting condition exclusion: Group health plans may not impose any preexisting condition exclusion, regardless of the enrollee's age. (This follows the earlier prohibition pertaining only to enrollees under age 19.)

Waiting periods: A group health plan may not impose an eligibility waiting period that exceeds 90 days.

**B. The following PPACA provisions apply ONLY to NON-GRANDFATHERED PLANS. To be clear, these requirements will apply to...**

- Plans in existence on March 23, 2010 which lose grandfathered status.

- **Plans adopted after March 23, 2010.**
- **These things will not apply to plans in existence on March 23, 2010 which retain grandfathered status. That exemption is the benefit of grandfathering.**

**1. Effective for plan years beginning on or after September 23, 2010 (e.g., January 1, 2011 for calendar year plans):**

Coverage of preventive services: Plans must provide certain preventive services and may not impose cost-sharing on these benefits. (Examples: well-child care and certain immunizations.)

No discrimination based on salary: Insured healthcare plans become subject to nondiscrimination requirements somewhat similar to those that apply to qualified retirement plans. (Self-insured plans have been subject to discrimination requirements for decades.)

Appeals and review: Group health plans must implement an appeals process for appeals of claims that will, among other things, include a binding external review process. Employees who appeal a decision must receive continued coverage pending the outcome of the appeal.

**2. Effective for plan years beginning on or after January 1, 2014:**

Guaranteed renewal: *Health insurers* offering group health coverage must renew or continue in force such coverage at the option of the plan sponsor.

No discrimination based on health status, etc.: A group health plan may not restrict eligibility (or continued eligibility) for an employee or dependent based on the person's specified health status-related factors (such as medical history or genetic information.)

Limits on cost-sharing: A group health plan may not impose annual limits on cost-sharing that exceed specified dollar amounts. (The dollar amounts are those which currently apply to out-of-pocket expenses for high deductible health plans.) There are separate limits for self-only (\$5,950) and family coverage (\$11,900).

**C. DELAYED PPACA EFFECTIVE DATE FOR COLLECTIVELY BARGAINED PLANS.**

Independent of the general grandfathering outlined above, there is a delayed effective date for collectively bargained plans. The statutory delay provision might be read as applying only to insured plans. However, excluding self-insured plans seems unlikely, given the reasons behind delayed collective-bargaining effective dates.

If you have a group health plan that is subject to one or more collective bargaining agreements ("CBA"), the effective date of PPACA is delayed until the expiration of the CBA.

- After the CBA expires, the plan will be subject to PPACA on a grandfathered or non-grandfathered basis.
- The collectively bargained plan would be considered grandfathered if it was in existence on March 23, 2010 and there have been no material modifications disturbing grandfathered status.

- Even if the collectively bargained plan is grandfathered at the expiration of the CBA, costs will likely rise upon implementation of the changes required of grandfathered plans listed at Section A above (e.g., no lifetime limits, no annual limits, no pre-existing conditions).

Thus, employers must anticipate these increased costs that will apply as soon as any "grandfathered" CBA's expire. If possible, you may want to negotiate other offsetting economic concessions in advance of the CBA expiration.

## **KEY TAKEAWAYS:**

**1. Other than adding new employees or family members, CONSIDER THE POSSIBLE LOSS OF GRANDFATHERED STATUS WHEN MAKING ANY CHANGES TO A GRANDFATHERED PLAN. Even common changes such as the following might end grandfathering:**

- Changes in co-pays and deductibles
- Change from insured to self-insured (or vice versa)
- Changing plan numbers
- Changes due to mergers/acquisitions
- Wrapping currently separate plans into one (which we would otherwise likely recommend!)

**At this time, we don't know what changes will end grandfathered status.**

**2. Collectively-bargained plans are fully exempt from PPACA until the CBA(s) in effect on March 23, 2010 expire. Employers should anticipate the new requirements that will apply once the CBA expires. And of course, consider the effect of further changes that might end "general" grandfather status.**

**3. We will advise of further PPACA guidance to facilitate your decisions and compliance.**

*Burning Benefits News is a communication designed to provide timely information regarding current employee benefits issues. It does not constitute legal advice, as we must address your specific facts in rendering legal opinions. As required by tax regulations, any tax information contained in the communication is not intended to be and cannot be used for the purpose of avoiding tax penalties.*