

I am going to devote the bulk of this newsletter to the one topic almost everyone has been waiting for since health care reform passed. The government (i.e. the Internal Revenue Service, Department of Labor and Department of Health and Human Services) issued rules governing grandfathered vs. non-grandfathered plans. However, before I get into that topic I want to mention two other items.

COBRA Subsidy

It appears, at least for the time being, the COBRA (and Ohio Mini-COBRA) premium subsidy has ended. COBRA applies to employers with 20 or more employees while Ohio Mini-COBRA applies to employers with less than 20 employees. The jobs bill currently working its way through Congress extends jobless benefits. However, the current bill does not include any money to extend the COBRA (and Ohio Mini-COBRA) premium subsidy. Congress is concerned about the projected \$ 8 billion price tag associated with the subsidy. However, there still is a possibility the subsidy may be re-introduced at some point.

As you will recall, the Ohio Mini-COBRA used to last six months. Then the statute was amended to say Ohio Mini-COBRA lasted 12 months. However, there was a special rule that said for people receiving the subsidy their Ohio Mini-COBRA would last for as long as the subsidy. So this meant that some people on Ohio Mini-COBRA could receive the coverage for up to 15 months. Now that the subsidy has ended (at least temporarily) anyone becoming eligible for Ohio Mini-COBRA on or after June 1, 2010, will only receive 12 months' worth of extended coverage. Note that anyone currently receiving the subsidy can continue to receive the subsidy for up to 15 months and continue their Ohio Mini-

COBRA coverage for the entire 15 months. In other words, anyone who first becoming eligible for Ohio Mini-COBRA on or after June 1, 2010, will only get 12 months' worth of coverage unless the subsidy is retroactively reinstated.

Now that the subsidy has ended, people should go back to using the "normal" COBRA notices. However, as alluded to above, it is very possible the subsidy may be reinstated at a later date. If that happens, it is likely it will be retroactively reinstated which means it will be an administrative headache to comply with the notice requirements.

Ohio Department of Insurance Reverses Itself

In our April 30, 2010 newsletter we reported that the Ohio Department of Insurance has taken the position that when a child lost dependency status under the group health plan because of age, that child was not entitled to COBRA. First, we found it odd that an Ohio agency would comment on Federal law. Second, we did not agree with that assessment; but we simply reported it. In any event, the Ohio Department of Insurance has reversed its position and now says that whenever a child loses coverage due to a loss of dependency status, as defined by the plan, that child is entitled to COBRA.

The following is a link to the Ohio Department of Insurance's latest release. This release replaces a previous version that stated employers did not have to offer COBRA to a child who lost coverage upon attaining age 28.

<http://www.insurance.ohio.gov/Consumer/Documents/Dependent%20Age%20FAQs.pdf>

Again, remember small employers in Ohio should revise their Mini-COBRA notices to say the coverage will only last 12 months for employees (and family members) involuntarily terminated after May 31, 2010.



Grandfathered vs. Non-Grandfathered Health Plans

One of the main goals of health care reform was to expand coverage. However, there was a large backlash and criticism about the Federal government takeover of health care. Therefore, one of President Obama's selling points was to say that if you like your current coverage you can keep it. Basically what President Obama was referring to was grandfathered vs. non-grandfathered plans. Health care reform imposes a number of requirements on health plans. However, if the plan is grandfathered it is exempt from some (but not all) of those new requirements. Also, beginning in 2014, most individuals will be penalized if they do not have a certain level of health coverage. If a person is covered by a grandfathered plan, he/she will be exempt from the penalty.

A grandfathered plan is defined under the statute as a plan that was in force on the day the law was signed (i.e. March 23, 2010). Therefore, for the plan to be grandfathered it had to be in existence on March 23, 2010. As a result, any plan established after March 23, 2010, is, by definition, a non-grandfathered plan. However, the big unknown was what would cause a grandfathered plan to lose that status and become a non-grandfathered plan. In other words, just because a plan was in existence on March 23, 2010, did not mean that that plan was forever a grandfathered plan.

The statute said that employers can add family members of current participants to the plan without impacting the plan's status as grandfathered. The statute also said that new employees and their family members could be added and the plan still will be considered grandfathered. Other than that, there was no additional guidance as to what changes may or may not change the plan from grandfathered to non-grandfathered.

The government released 83 pages of regulations in the form of interim final rules on June 10, 2010 that answers that question. That is, the regulations answer the question what changes and modifications can cause a grandfathered plan to become a non-grandfathered plan. The White House specifically stated the rules are in draft format and should be not relied upon until finalized.

Before I get into the details let me say you probably are going to be disappointed with the rules.

One of the biggest questions was if the employer could change carriers and still retain grandfathered status. The answer is "NO!" The rules clearly state if the employer changes carriers (e.g. Anthem to United HealthCare or vice versa) will cause the plan to lose its grandfathered status. This essentially means you are stuck with your current carrier until the end of time if you want to retain your status as a grandfathered plan.

Other changes that will cause the plan to lose its grandfathered status are:

- Elimination of all or substantially all benefits to diagnose or treat a particular condition – Basically any plan design change that reduces benefits;

- Any increase in a cost sharing provision based on percentages (e.g. the plan has a 20% coinsurance for inpatient surgery and the percentage is increased to 25% coinsurance) will cause the plan to lose its grandfathered status;
- Any increase in a cost sharing provision based on fixed amounts other than copayments (e.g. deductibles and out-of-pocket maximums) above the overall medical inflation will cause the plan to lose its grandfathered status – This is an extremely complicated formula and is based on inflation since March 23, 2010;
- Any increase in fixed copayments that exceed the greater of \$ 5 (adjusted for medical inflation) or if the total increase in the copayment is greater than the increase in medical inflation plus 15 percentage points will cause the plan to lose its grandfathered status.

The draft regulations allow employers to retroactively make changes to preserve the plan's grandfathered status. Therefore, if an employer adopted a change before the regulations are finalized, the employer will have a "do-over" and retroactively take away the changes. The regulations contain a number of examples of what are and are not permissible modifications. The regulations also have tables listing the parts of health care reform that do not apply to grandfathered plans.

The following is a link the rules.

<http://www.siaa.org/files/PPACA/Grandfather-Status-Proposed-Rule.pdf>

Again, it is premature to decide whether or not to make plan changes based on the rules in their current state. However, the rules certainly indicate the government's thinking when

it comes to grandfathered vs. non-grandfathered plans. If the final rules are not modified it is certain that the number of grandfathered plans will drop dramatically over time.

In closing we want to remind you that retaining grandfathered status, while advantageous to most employers, should not be the “end all – be all” goal for employers. That is to say, it is reasonable to expect the advantages of making various plan changes that may jeopardize the plan’s grandfathered status may outweigh the advantages associated with the plan retaining its grandfathered status.

We will, of course, be providing more information about the rules in the future.