New Proposed Rule Provides Flexibility For Grandfathered Group Health Plans

Jul 20, 2020

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The Trump administration has just issued a new proposed rule which, if finalized, will provide greater flexibility for grandfathered group health plans and group health insurance coverage to make changes to cost-sharing requirements without losing grandfathered status. This proposed rule was issued jointly by the Departments of Health and Human Services, Labor, and Treasury (the "Departments").

When the Affordable Care Act ("ACA") took effect, existing health plans were permitted to continue if they had been continuously offered on or before March 23, 2010, and certain changes to the plan had not been made. These plans were deemed grandfathered plans and were not subjected to certain ACA requirements, such as the requirement to cover all preventative care without cost-sharing. At the end of 2019, close to 13% of covered employees in group health plans or group health insurance coverage were still enrolled in a grandfathered plan.

Under the current rules, in order to maintain grandfathered plan status, a plan may not:

- Eliminate of benefits related to treatment or diagnosis of a particular condition;
- Increase the percentage of cost-sharing requirement (Coinsurance);
- Increase the fixed-amount of cost-sharing beyond certain enumerated thresholds;
- Increase the fixed-amount of copayments beyond certain enumerated thresholds;
- Decrease the employer's contribution toward the cost of coverage by more than five percentage points; or
- Impose annual limits on the dollar value of all benefits for group health plans and insurance coverage that were not

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already in place prior to March 23, 2010.

These restrictions on cost-sharing adjustments are now being reevaluated by the Trump administration. The goal is to allow more flexibility in cost-sharing changes in grandfathered group health plans and group health insurance coverage to help better serve the public. Specifically, the prohibition against cost-sharing increases and method of adjusting for inflation are being revised.

The proposed rule will allow for high-deductible health plans ("HDHP") to increase fixed-amount cost-sharing requirements in accordance with changes to Internal Revenue Service ("IRS") requirements for HDHPs that would otherwise cause a loss of grandfather status under the current rules. When HDHPs are paired with health savings accounts ("HSA"), individuals and employers may contribute funds to the HSA on a pre-tax basis for the individuals to use to pay for qualified medical care on a tax-free basis. By allowing grandfathered group health plans and group health insurance coverage to raise cost-sharing requirements in HDHPs to comply with IRS requirements, these plans may continue to be provided for those who want to maintain and contribute to their HSA.

Additionally, the rule will include a revised definition of "maximum percentage increase" which provides an alternative method of determining that amount based on the premium adjustment percentage. Previously, plans were required to use medical inflation to account for healthcare cost increases over time. The Departments believe the new premium adjustment percentage method will better reflect the increase in underlying costs for grandfathered group health plans and group health insurance coverage, as it will not factor in changes in price for self-pay or Medicare patients.

The Departments are currently accepting comments on the proposed rule until August 14, 2020. After closing the comment period, the final regulations will be issued and become effective 30 days after publication in the Federal Register. If you have questions about the proposed rulemaking or any other regulatory requirements, Frost Brown Todd's Insurance Regulation & Risk

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Management and Employee Benefits teams can help. Please contact Matt Wagner, Bill Williams, or Carl Lammers for more information.

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