



for your information®



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Important Health Care Reform Guidance Released on Age 26 Rules and Grandfathered Plan Status

Recent guidance contains an important new clarification of the age 26 rules that plan sponsors may wish to consider as they prepare for open enrollment. In addition, the guidance provides clarifications on how plans can retain grandfather status in certain situations involving fully insured coverage and multiemployer plans.

Background

The Departments of Health and Human Services, Labor and Treasury (the agencies responsible for implementing the new health care reform law) continue to publish much needed guidance for plan sponsors. On September 20, 2010, the agencies posted a series of [Frequently Asked Questions](#) (FAQs) and other subregulatory guidance that contains important clarifications for plan sponsors.

This *For Your Information* deals specifically with issues that impact all plan sponsors (regardless of grandfather status), as well as rules related directly to maintaining grandfather status. Buck will provide a separate publication detailing those portions of the guidance applicable only to non-grandfathered plans, including –

- claims, appeals and external review processes
- out-of-network emergency services
- application of the nondiscrimination rules to fully insured plans.

Enforcement Posture

The agencies make clear that their focus is on assisting plans as they come into compliance with the many new rules imposed by health care reform. Imposition of penalties will not be the focus if plans are working diligently and in good faith to understand and comply with the rules.

Coverage of Adult Children

All plans, regardless of grandfather status, are required to come into compliance with new rules governing adult dependents as of the first plan year on or after September 23, 2010. (See our May 13, 2010 [For Your Information](#).) The [interim final regulations](#), which clarify how the dependent eligibility extension must be implemented, prohibit the imposition of residency, dependency or student status requirements on an employee's children until they reach the age of 26.

The new FAQs make clear that these so-called “age 26 rules” are *only* applicable to a limited set of covered dependents. These are –

- biological children
- stepchildren
- adopted children (including those placed for adoption)
- foster children.

If a plan sponsor chooses to cover other children, it will be able to set more restrictive conditions on coverage. For example, if a plan extends coverage to employees’ grandchildren, or the children of domestic partners, it could choose to impose residency, student status or other requirements on such children and could provide that eligibility ends before age 26. By imposing these restrictions, an employer may be able to avoid having to calculate imputed income for these additional dependents.

BUCK COMMENT. *This important clarification will be welcomed by plan sponsors who had wanted to maintain more restrictive rules on some groups of children – especially grandchildren. Others may prefer, however, to apply the same rules to all children for employee relations and administrative reasons.*

Grandfathered Health Plans

Protection for Carriers. In comments to the agencies regarding the [interim final regulations](#) on grandfather status, several carriers expressed concern that they may not be in a position to know whether an employer has changed premium contribution levels in such a way as to cause the loss of grandfather status. As the regulations provide, grandfather status will be lost if an employer decreases its contribution rate toward the cost of coverage by more than 5 percentage points below its contribution rate on March 23, 2010, or makes certain other plan changes. (See our June 23, 2010 [For Your Information](#).)

The FAQs state that, as a temporary measure, the agencies will not treat a plan as losing grandfather status if the plan sponsor and carrier take the following steps –

- Upon renewal, the carrier requires the plan sponsor to make a representation regarding its contribution rates for the renewal year as well as its contribution rates on March 23, 2010.
- The carrier’s contracts disclose in a prominent and effective manner that plan sponsors are required to notify the carrier of rate changes at any point during the year. Carriers are allowed to set a requirement for advance notification of contribution changes such as 30 or 60 days in advance.

For renewals prior to 2011, these steps must be taken no later than January 1, 2011.

BUCK COMMENT. *Plan sponsors should expect requests from their carriers regarding these new procedures.*

Multiemployer Plans. In some instances, multiemployer plans are set up in such a way that the plan itself does not control employer contribution amounts. The FAQs provide multiemployer plans that follow procedures similar to those outlined above for fully insured plans with the same relief.

In addition, the FAQs address a common multiemployer plan feature in which employees contribute a flat dollar amount toward their coverage. In these arrangements, the employers' contributions typically float to cover changes in plan experience. The FAQs make clear that if the dollar amount of the employee contributions does not increase, there will be no loss of grandfather status regardless of how much the employer contributions may fall.

Changing Carriers. One area of concern to many fully insured plan sponsors is the provision in the interim final regulations stating that any change in carrier results in an automatic loss of grandfather status. The FAQs indicate that the agencies will soon be providing guidance to address circumstances under which a plan could change carriers and still retain grandfather status.

Effective Date

This new guidance is generally effective at the same time as the interim final regulations that they supplement.

Conclusion

While these FAQs provide some needed clarifications, there are still many aspects of the new health care reform law which are uncertain. Buck's consultants are available to work with you as you adapt your open enrollment communications and plan procedures to come into compliance with these rules.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.