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## ***YOUR GRANDFATHERED PLAN***

Be careful if you currently have an employee health care plan and you are looking to change its structure. There may be an advantage to you if you had an employee plan before March 23, 2010 and you do not make changes to it even though there are some short-term disadvantages. This is all about the President's statements at the time that "if you like your current plan, you can keep it." While current cost pressures may be forcing you to consider changes to your employees' cost sharing participation, it may be better not to make those changes. It depends on what benefits you currently offer, because if new benefits have to be added because you lost grandfathered status, the overall cost might go up.

The law provides for grandfathered plans. If you lose the grandfathered status, the plan must provide the minimum essential benefits required by the law. The law requires non-grandfathered plans in the individual and small group markets both inside and outside of the Exchanges to include certain essential health benefits (EHBs) beginning in 2014. Self-insured group health plans, health insurance coverage offered in the large group market,

and grandfathered health plans are not required to cover the essential health benefits. The law provides that EHBs include items and services within the following 10 benefit categories:

- (1) ambulatory patient services,
- (2) emergency services,
- (3) hospitalization,
- (4) maternity and newborn care,
- (5) mental health and substance use disorder services, including behavioral health treatment,
- (6) prescription drugs,
- (7) rehabilitative and habilitative services and devices,
- (8) laboratory services,
- (9) preventive and wellness services and chronic disease management, and
- (10) pediatric services, including oral and vision care.

Under the law, the Department of Health and Human Services (HHS) was given the task to determine the scope of the essential health benefits and the standard is "equal to the scope of benefits provided under a typical employer plan," but the law did not define "typical." The HHS has decided to let the States decide. States would have the flexibility to select an existing health plan to set the "benchmark" for the items and services included in the essential health benefits package. States may choose one of

the following health insurance plans as a benchmark:

- One of the three largest small group plans in the state;
- One of the three largest state employee health plans;
- One of the three largest federal employee health plan options; or
- The largest HMO plan offered in the state's commercial market.

If states choose not to select a benchmark, HHS intends to propose that the default benchmark will be the small group plan with the largest enrollment in the state.

Now here's the concern of the moment. The government has indicated what constitutes an action that would jeopardize your grandfathered plan status. One of them is reconfiguring the cost sharing arrangement. According to the government, the following are considered to change a health plan so significantly that they will cause a group health plan or health insurance coverage to relinquish grandfather status:

- **Elimination of all or substantially all benefits to diagnose or treat a particular condition.**
- **Increase in a percentage cost-sharing requirement (e.g.,**

**raising an individual's coinsurance requirement from 20% to 25%).**

- **Increase in a deductible or out-of-pocket maximum by an amount that exceeds medical inflation plus 15 percentage points.**
- **Increase in a copayment by an amount that exceeds medical inflation plus 15 percentage points (or, if greater, \$5 plus medical inflation).**
- **Decrease in an employer's contribution rate towards the cost of coverage by more than 5 percentage points.**
- **Imposition of annual limits on the dollar value of all benefits below specified amounts.**

Conversely, the government has said that the following types of changes would not be considered significant: cost adjustments to keep pace with medical inflation, adding new benefits, making modest adjustments to existing benefits, voluntarily adopting new consumer protections under the law, or making changes to comply with State or other Federal laws. Premium changes are not taken into account when determining whether or not a plan is grandfathered.

Also, the government has indicated that an employer can change the "carrier" (enter into a new policy, certificate, or contract of insurance) without ceasing to be a grandfathered health plan, provided no major changes have been made to the plan itself.

It is worth it to evaluate the consequences of losing grandfathered status before you

make any decisions now. It may be that the need to change your cost sharing configuration now outweighs it but at least take a look.

### ***THANK YOU VETERANS***

Thank you to all our veterans and their families.