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Group Health Plans and Health Insurance Coverage Rules Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Afforable Care Act

Comment On: IRS-2010-0010-0001
Group Health Plans and Health Insurance Coverage: Interim Final Rules for Relating to Status as a Grandfathered Health Plan under the Patient Protection and Affordable Care Act

Document: IRS-2010-0010-0942
Comment on FR Doc # N/A

Submitter Information

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Organization: Department of Managed Health Care
Government Agency Type: State
Government Agency: Department of Managed Health Care

General Comment

See attached file(s)--DMHC's comments on grandfathered plan rules.

Attachments

IRS-2010-0010-0942.1: Comment on FR Doc # N/A

DEPARTMENT OF
Managed
Health Care

STATE OF CALIFORNIA
DEPARTMENT OF MANAGED HEALTH CARE

August 16, 2010

Mr. Jay Angoff, Director
Office of Consumer Information and Insurance Oversight
Department of Health and Human Services
Attention: OCIIO-9991-IFC
P.O. Box 8016
Baltimore, MD 21244-1850

RE: RULES FOR GRANDFATHERED PLAN STATUS UNDER THE ACA

Dear Mr. Angoff:

The California Department of Managed Health Care (DMHC) appreciates the opportunity to comment on the Interim Final Rule and Proposed Rule (the Rules) for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act (ACA).[1]

The DMHC is the California agency that licenses and regulates health care service plans (health plans) under the Knox-Keene Health Care Service Plan Act of 1975. There are 111 health plans providing managed health care services to 21 million Californians and operating under this state licensing law. California's regulation of health care coverage is divided between the DMHC, which regulates all managed care plans, including some preferred provider organizations (PPOs) issued by health plans, and the Department of Insurance, which regulates indemnity carriers that issue health insurance policies, including PPOs.

The DMHC has identified several provisions of the Rules which could be clarified to help interested parties (i.e., health plans, providers and consumers) better understand their rights and obligations under the federal laws.

[1] 75 Fed. Reg. 34538 (June 17, 2010).

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I. CLARIFICATION OF "NEW POLICY, CERTIFICATE, OR CONTRACT OF INSURANCE"

The Rules implement provisions regarding grandfathered health plan coverage that are subject only to certain requirements of the ACA. Grandfathered health plan coverage is "coverage provided by a group health plan, or a health insurance issuer, in which an individual was enrolled on March 23, 2010."[2] However, "if an employer or employee organization enters into a new policy, certificate, or contract of insurance after March 21, 2010 ... then that policy certificate, or contract of insurance is not a grandfathered health plan with respect to the individuals in the group health plan."[3]

Health plans regulated by the DMHC are covered under the Rules because they provide coverage "by a group health plan." However, California health plans do not issue a "policy, certificate, or contract of insurance" as such. Rather, health plans issue a health care service plan contract or health plan contract. While a health care service plan may be "insurance" for some purposes, it would be helpful to clarify that the phrase "policy, certificate, or contract of insurance" includes a health care service plan contract or health plan contract.

II. CLARIFICATION OF "STATE INSURANCE DEPARTMENT"

The Rules include transitional provisions that allow a group health plan or health insurance issuer to keep the grandfathered status of coverage when the plan or issuer makes changes effective after March 23, 2010 "pursuant to a filing on or before March 23, 2010 with a State insurance department ..."[4]

Under California's dual regulatory scheme, changes affecting health plans are filed with the DMHC, not with the "State insurance department." It would be helpful, therefore, to clarify that the phrase "State insurance department" used in the Rules includes other state departments, such as the DMHC, that are responsible for licensing and regulating health plans.

III. DEFINITION OF "BENEFIT PACKAGE"

The Rules apply separately to each "benefit package" made available under a group health plan or health insurance coverage.[5] "Benefit package" is not defined, although examples in the Rules indicate that the benefit package can be one of several coverage options (insured versus self-insured) offered by a health plan.[6] In order to determine the extent to which a health plan that modifies coverage provisions loses grandfathered status for a particular product, it would be helpful to further define "benefit package" and to clarify how the term relates to a "policy, certificate, or contract of insurance" as used in the Rules.

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[2] 29 C.F.R. § 54.9815-1241T(a)(1)(i); 29 C.F.R. § 2590.715-1251(a)(1)(i); 45 C.F.R. § 147.140(a)(1)(i).
[3] 29 C.F.R. § 54.9815-1241T(a)(1)(ii); 29 C.F.R. § 2590.715-1251(a)(1)(ii); 45 C.F.R. § 147.140(a)(1)(ii).
[4] 29 C.F.R. § 54.9815-1251T(g)(2)(i)(B); 29 C.F.R. § 2590.715-1251(g)(2)(i)(B); 45 C.F.R. § 147.140(g)(2)(i)(B).
[5] 29 C.F.R. § 54.9815-1251T(a)(1)(i); 29 C.F.R. § 2590.715-1251(a)(1)(i); 45 C.F.R. § 147.140(a)(1)(i).
[6] See, *e.g.*, 29 C.F.R. § 54.9815-1251T(a)(5), Example 2.

IV. WHETHER RENEWING GRANDFATHERED SMALL GROUP COVERAGE IS "ACTIVELY MARKETING"

Federal law (and conforming state laws) requires guaranteed availability of coverage for employers in the small group market. To meet this requirement, each health insurance issuer that offers health insurance coverage in the small group market in a state must offer to any small employer in the state all products that are approved for sale in the small group market and that the issuer is "actively marketing."[7] It is unclear whether a health insurance issuer that renews a grandfathered plan consistent with the ACA is "actively marketing" the plan for purposes of these small group provisions. The DMHC therefore requests clarification of whether renewal of grandfathered coverage constitutes "actively marketing" for purposes of federal small group guaranteed availability of coverage provisions. This clarification would also be helpful in interpreting the effect of the ACA on similar state law requirements.

V. DESIGNATION OF "MOST POPULAR" INDIVIDUAL PLAN PRODUCTS

Current federal law provides for the guaranteed availability of individual health insurance coverage to certain individuals with prior group coverage.[8] Under those provisions, a health plan is required to offer alternative guaranteed issue coverage if the state in which the plan operates does not have a mechanism or program for such coverage. California law conforms to the definitions used in the United States Code and Code of Federal Regulations. In practice, health plans under DMHC jurisdiction conform to this mandate by offering as alternative coverage their two most popular plan products by premium volume.[9]

It is unclear what coverage a health plan or insurer must offer as the two most popular plans newly-eligible individuals after September 23, 2010 if the plan products are designated are grandfathered plans. Further, it is unclear how a health plan should make the designation of the two most popular guaranteed issue products based on the October 1 – September 30 period of the preceding year if the plan cannot market pre-ACA grandfathered products or non-ACA compliant products without losing grandfathered status for such products. As the period for determining the two most popular products for 2010 must be the period prior to the effective dates of the ACA, it appears unavoidable that the products offered from October 1, 2009 through September 23, 2010 will not be ACA compliant or will be grandfathered. Accordingly, the DMHC requests guidance on the effect of grandfathering on health plan compliance with the requirement for identifying the "two most popular policies" in the individual health insurance market.

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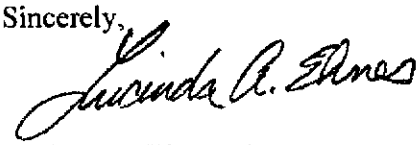
[7] 42 C.F.R. § 146.150(a)(1).
[8] 42 U.S.C. § 300gg-41, 45 C.F.R. § 148.120.
[9] 42 U.S.C. § 300gg-41(c), 45 C.F.R. § 148.120(c).

Thank you for the opportunity to comment on the proposed Rules. Should you have any questions, please do not hesitate to contact me at (916) 322-2012 or cehnes@dmhc.ca.gov.

Sincerely,



Lucinda A. Ehnes, Esq.
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CH:am