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BULLETIN 10-21

Date: June 23, 2010

To: Insurers, Nonprofit Health Service Plans, and Health Maintenance Organizations (herein referenced as "carriers") Operating in Maryland

Re: Patient Protection and Affordable Care Act and Notices Regarding Grandfathered Health Plans

The Patient Protection and Affordable Care Act ("PPACA") provided certain protections for individuals covered under grandfathered health plans. Federal interim final regulations, published June 17, 2010, defines a grandfathered health plan to mean "coverage provided by a group health plan, or a group or individual health insurance issuer, in which an individual was enrolled on March 23, 2010 (for as long as it maintains that status under the rules of this section)." See 45 CFR §147.140(a)(1)(i).

The federal regulations also require that to maintain status as a grandfathered health plan, a disclosure is required to be provided to a participant or beneficiary in any plan materials indicating the carrier's belief that the health plan is a grandfathered health plan. The federal regulations set forth model language that will meet the requirements of this required disclosure in 45 CFR §147.140(a)(2).

Required Notice When Changes Are Made to Health Plans

The Maryland Insurance Administration believes it is important that individual contract holders and group contract holders who currently have a grandfathered plan be informed of the implications of certain decisions regarding changes to the health plan and grandfathered health plan status. Therefore, carriers will be required to notify individual contract holders and group contract holders whose health plans meet the definition of grandfathered health plan under the 45 CFR §147.140(a)(1)(i) of the fact that any of the following changes will end the grandfathered health plan status of the health plan:

1. Elimination of a benefit;
2. Increase in a percentage cost-sharing requirement;

3. Any increase in a fixed-amount cost-sharing requirement other than a copayment (such as a deductible or out-of-pocket limit), if the total percentage increase in the cost-sharing requirement measured from March 23, 200 exceeds the medical inflation percentage increase, plus 15 percentage points;
4. Any increase in a fixed-amount copayment, if the total increase in the copayment measured from March 23, 2010 exceeds the greater of:
    a. An amount equal to $5 increased by medical inflation; or
    b. Medical inflation, expressed as a percentage, plus 15 percentage points, determined by expressing the increase in the copayment as a percentage;
5. For group health plans, if the employer decreases it's contribution rate, based on cost of coverage, towards the cost of any tier of coverage by more than 5% below the contribution rate for the coverage period that ended March 23, 2010;
6. For group health plans, if the employer decreases it's contribution rate, based on a formula, towards the cost of any tier of coverage by more than 5% below the contribution rate for the coverage period that ended March 23, 2010;
7. Any addition of an annual limit on all benefits, if the annual limit or lifetime limit on all benefits did not exist on March 23, 2010;
8. For any health plan that imposed a lifetime limit on all benefits, but no annual limit on all benefits on March 23, 2010, any adoption of an overall annual limit on all benefits at a dollar value that is lower than the dollar value of the lifetime limit on all benefits on March 23, 2010; or
9. Any decrease in an annual limit for all benefits.

Required Notice for New Applicants

If an individual or small employer applies for new coverage, carriers will be required to provide a notice indicating that the new coverage is not a grandfathered plan under the Patient Protection and Affordable Care Act.

We understand that the federal regulations were recently published and that carriers are now reviewing the new federal regulations. Therefore, carriers are required to begin to provide these additional consumer notices to individual and group grandfathered health plans that are being changed on or after September 1, 2010 and to new plans for which applications are taken on or after September 1, 2010. Failure to provide the required notices will be considered a misrepresentation of the terms of the contracts and a violation under §27-202 of the Insurance Article and §19-729(a)(5) of the Health-General Article.

Questions about this bulletin may be directed to the Life/Health Section of the Maryland Insurance Administration at 410-468-2170.

Signature on file with original

Brenda A. Wilson
Associate Commissioner
Life and Health Section