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Governor

ANTHONY G. BROWN
Lt. Governor



BETH SAMMIS, Ph.D.
Acting Commissioner

KAREN STAKEM HORNIG
Deputy Commissioner

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202
1-800-492-6116 TTY: 1-800-735-2258
www.mdinsurance.state.md.us

BULLETIN 10-39

Date: November 23, 2010

To: Insurers, Nonprofit Health Service Plans, and Health Maintenance Organizations ("Carriers") Providing Health Plans in Maryland

Re: Grandfathered and Non-Grandfathered Health Plans

The purpose of this bulletin is to respond to a number of questions that have been posed to the Maryland Insurance Administration by various carriers on the issue of grandfathered and non-grandfathered health plans under the Patient Protection and Affordable Care Act ("ACA").

Question 1: Is a carrier permitted to add the new non-grandfathered mandates, such as the new preventive health service benefit required by ACA, to health plans that meet the grandfathered health plan criteria under ACA?

Response: In the individual and large group markets, if the carrier intends to raise premiums for the addition of these new benefits to a grandfathered health plan, the carrier *must* provide an option to the policyholder to reject the additional benefits. An option to reject the new benefits need not be offered to small employers, since the Maryland Health Care Commission added all the new ACA benefits to the comprehensive standard health benefit plan.

Question 2: If a carrier voluntarily decides to add the benefits required for non-grandfathered health plans to grandfathered health plans, may the carrier determine the grandfathered health plan (containing all the non-grandfathered health plan benefits) to be a non-grandfathered health plan?

Response: No. ACA and the applicable regulations issued by the Secretary of Health and Human Services establish the definitions of grandfathered health plans and non-grandfathered health plans. The ACA applicable regulations specify that the addition of benefits to a grandfathered health plan does not terminate the grandfathered status of the health plan. Since it is anticipated there will be rating advantages for grandfathered health plans in 2014, a carrier may not arbitrarily determine a health plan that meets the

grandfathered health plan criteria under the ACA regulations to be a non-grandfathered health plan.

Question 3: Who is responsible for keeping a record of which health plans are grandfathered health plans?

Response: The carrier is responsible for keeping a record of which health plan plans are grandfathered health plans.

Question 4: For group health plans, may a carrier depend on an attestation from an employer that the employer's health plan continues to meet the criteria for a grandfathered health plan?

Response: Yes. For group health plans, the carrier may base its grandfathered health plan status determination on an attestation from the employer. Carriers that intend to use this "attestation method" must develop attestation forms for the employer to complete noting all the criteria modifying the status of a grandfathered plan, including the contribution rate paid by the employer for the employees' coverage.

Question 5: If an individual or group had a plan that would satisfy the criteria for a grandfathered health plan and changes plans or carriers, are there any situations in which the new plan could be considered to be a grandfathered health plan?

Response: New federal regulations were published in the Federal Register on November 17, 2010 on this issue. The regulations specify that if an individual changes carriers or plans after March 23, 2010, the new plan will not be a grandfathered health plan. However, the regulations also state that "a group health plan does not cease to be a grandfathered health plan merely because the plan (or its sponsor) enters into a new policy, certificate, or contract of insurance after March 23, 2010." The preamble to the regulations specify that this change to the federal regulations apply only to changes to group health insurance coverage that are effective on or after November 15, 2010.

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