



IN THE FIRST FIVE WEEKS AFTER PASSAGE of the landmark healthcare reform bill, we presented 25 seminars to agents, brokers and their clients, giving an overview of the legislation and helping them assess what changes are in store. We also generated a list of frequently asked questions and responded to more than 150 inquiries from Council members and their clients.

The two most frequently asked questions concern the definition of “grandfathered” plans and coverage of dependent children.

A grandfathered plan is any plan in existence on March 23, the date the law was enacted. The legislation provides no more detail distinguishing a grandfathered plan from a

■ Community rating/no medical underwriting (for small-group—fewer than 100 employees—and individual plans, premiums may not be based on information related to health or medical claims but instead will be set at a pool level)

■ Premium increase reviews (does not apply to self-insured plans)

■ No discrimination in offering benefits or contribution rates in favor of highly compensated employees (this already applies and will continue

to apply to self-insured plans)

■ Plan-quality reporting obligation to HHS (specifics to be determined).

Until we have regulatory guidance, we will not know what plan changes will turn a grandfathered plan into a new plan. The statute does make clear, however, that new enrollees may be added to an employer-provided grandfathered plan, and we expect that grandfathered plans will be able to make the changes required by the new law without losing their grandfathered status (although even the latter is not explicitly clear). Beyond that, there is simply no guidance. We expect clarifying regulations to be issued by late summer.

This raises an unavoidable dilemma: If an employer plan renewal date is between now and then, how can potential changes to the plan be evaluated? Until regulations are issued, assume that any change would result in the loss of grandfather status. That may not mean that no plan changes should be made, though, especially since many are designed to reduce employer cost.

The evaluation metric should probably be: Does the potential immediate cost savings justify the potential increase in coverage cost? To some extent, the answer will

depend on the degree to which the employer’s existing plan already incorporates the additional elements the law imposes on “new” plans.

Regarding the other most frequently asked question, about dependent coverage...

Starting in 2014, all employers will be required to offer coverage to employees and their dependents or pay a penalty. After Sept. 23, 2010, all plans must cover dependent children up to age 26. We interpret this to mean it ends at age 26 rather than extending through age 26. We interpret the statute to require coverage of eligible adult children regardless of their marital status; though, it’s unclear whether coverage must be extended to a dependent’s spouse.

Changes to the tax code, however, allow coverage for dependents to be excluded from income until the calendar year in which the dependent turns 27. This is intended to give plans the flexibility to offer dependent coverage for a bit more time (e.g., if a calendar year plan wants to state that coverage continues until the end of the calendar year in which the dependent turns 26), without triggering tax consequences for the employee.

Until 2014, there are two coverage caveats for grandfathered plans:

■ Coverage must be extended to older children only if the plan already covers dependent children.

■ Grandfathered plans can exclude dependent children who have direct access to their own employer-provided coverage.

We will be working on clarifying the rules to make them as employer-plan friendly as possible, and we’ll keep you posted.

SINDER, A PARTNER AT STEPTOE & JOHNSON, IS CIAB GENERAL COUNSEL. ssinder@stepsto.com.

RHONDA BOLTON, IS OF-COUNSEL AT STEPTOE. rbolton@stepsto.com.

Young and Old

When it comes to healthcare reform, it pays to be grandfathered and it pays to be under 26 and on your parent’s group policy.

“new” plan. The advantage of being grandfathered is that these plans will not be obligated to implement a discrete list of plan design elements. Most are described in only general terms in the legislation, so the Department of Health & Human Services will be developing regulations to flesh out precisely what new plans will be required to do.

In the future, existing grandfathered plans are excluded from:

- Mandated offering of free preventive services
- Out-of-pocket limitations (these are equivalent to the high-deductible health plan out-of-pocket limits for HSAs)
- Primary care physician designation right (each plan participant will have the right to designate an in-network primary care physician of their choice)
- Clinical trial participation right (each plan participant will have the right to receive covered services through approved clinical trials)
- Mandatory appeals process rights
- Essential benefits/minimum plan value (Applies only to small-group—fewer than 100 employees—and individual plans. This is the standard “bronze” plan that HHS will develop with a standard set of benefits and premiums.)