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Sparb Collins
Executive Director
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Dear Sparb:

You asked Deloitte Consulting to prepare a letter explaining the changes that can be made to employee premium contributions to a grandfathered health plan without causing the plan to lose its grandfather status under the Affordable Care Act (ACA).

Following is a summary of the relevant rules relating to grandfather status under the ACA. It is for general information purposes only, and is not intended as legal or tax advice.

Overview of Grandfather Status Under the ACA

In general, a group health plan in existence on March 23, 2010 is eligible to be a "grandfathered health plan" for purposes of the ACA. A grandfathered plan is exempt from certain[1] of the ACA's otherwise applicable group health plan mandates for so long as the plan remains grandfathered.

Briefly stated, there are five changes (measured from March 23, 2010) that will cause a plan to lose its grandfathered status. These are:

- Elimination of all or substantially all benefits to diagnose or treat a particular condition.
- Any 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 increased by medical inflation).
- Decrease in an employer's contribution rate towards the cost of coverage by more than 5 percentage points.

Note that all thresholds are measured against the plan's terms as in effect on March 23, 2010. A plan could lose its grandfather status as a result of a single change exceeding any of the relevant thresholds, or as a result of a series of changes that, when aggregated, exceed any such thresholds.

[1] The Department of Labor has prepared a table of ACA provisions summarizing, among other things, which apply to grandfathered health plans. The table is available at: http://www.dol.gov/ebsa/healthreform/regulations/grandfatheredhealthplans.html.

A plan also can lose grandfather status pursuant to certain anti-abuse rules. Specifically, these anti-abuse rules provide a group health plan ceases to be a grandfathered health plan if –

- Employees are transferred into the plan or health insurance coverage (the transferee plan) from a plan under which the employees were covered on March 23, 2010 (the transferor plan);
- Comparing the terms of the transferee plan with those of the transferor plan (as in effect on March 23, 2010) and treating the transferee plan as if it were an amendment of the transferor plan would cause a loss of grandfather status under the Interim Final Regulations; and
- There was no bona fide employment-based reason to transfer the employees into the transferee plan. (Note that, for this purpose, changing the terms or cost of coverage is <u>not</u> a bona fide employment-based reason.)

Note also that, in order to maintain grandfathered status the Plan must disclose that it believes it is a grandfathered health plan and provide contact information for questions and complaints in any materials given to participants and beneficiaries that describe the plan's benefits. The Plan also must maintain sufficient records to verify its status as a grandfathered plan. These records must be available for examination by participants, beneficiaries, and government officials.

Employee Premium Contributions

According to regulatory guidance, "A group health plan … ceases to be a grandfathered health plan if the employer or employee organization decreases its contribution rate based on cost of coverage … towards the cost of any tier of coverage for any class of similarly situated individuals … by more than 5 percentage points below the contribution rate for the period of coverage that includes March 23, 2010." The contribution rate is the employer's contribution compared with the total cost of coverage, expressed as a percentage. (For self-insured plans the total cost of coverage is the plan's COBRA premium, excluding the 2% load for administrative expenses.)

Example

The sponsor of a grandfathered group health plan pays 100% of the total cost of self-only and family coverage. The sponsor reduces its contribution for family coverage to 90% of the total cost, but does not change its contribution for self-only coverage. The 10 percentage point reduction in the sponsor's contribution for family coverage causes the plan to lose its grandfathered status even though there is no change to the sponsor's contribution for self-only coverage.

Assume the same facts, except the sponsor reduces its contribution for family coverage in two steps. The first step is a reduction from100% of the total cost of family coverage to 95%. This first step does not result in a loss of grandfather status because the reduction does not exceed 5 percentage points. The second step, occurring one year later, is a reduction from 95% to 90%. This second step <u>does</u> result in a loss of grandfather status because the <u>total</u> reduction, measured from March 23, 2010, is more than 5 percentage points.

Note that the dollar amount of employer and employee contributions may increase as the total cost of coverage increases without changing the employer's contribution rate. However, freezing the dollar amount of employer contributions will lead to a reduction in the employer's contribution rate as the total cost of coverage increases.

Example

The sponsor of a grandfathered group health plan pays 100% of the total cost of self-only and family coverage. In 2014, the cost of self-only coverage is \$5,800 and the cost of family coverage is \$16,350. In 2015, the cost of family coverage increases to \$17,000, but the sponsor decides to make participants pay the additional \$650 per year. As a result, the sponsor's contribution rate drops from 100% in 2014 to ((16,350/17,000) x 100 =) 96% in 2015. This does not result in a loss of grandfather status because the reduction to the sponsor's contribution rate does not exceed 5 percentage points.

In 2016, the cost of family coverage increases to \$17,500, and the sponsor decides to increase its contribution to \$16,625. The sponsor's contribution rate drops again, this time from 96% in 2015to ((\$16,625/17,500) x 100 =) 95% in 2016. This does not result in a loss of grandfather status because the total reduction to the sponsor's contribution rate (measured from March 23, 2010) does not exceed 5 percentage points.

We hope this provides you the information you need. Please let me know if you have any questions or would like to discuss any of these issues in more detail.

Best,

Robert Davis
Director
Talent Performance and Rewards

cc: Pat Pechacek