

Lady Gaga and Health Care Reform

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Two of the most discussed and misunderstood developments of 2010 — Lady Gaga and health care reform. While I cannot shed any light on the Lady Gaga phenomenon, I can provide some clarity regarding the health care reform issues.

You will recall that on March 23, 2010, the President signed into law the Patient Protection and Affordable Care Act together with the Health Care and Education Reconciliation Act of 2010, which was signed into law on March 30, 2010. This legislation will reshape the U.S. health care system.

Fortunately for many employer plan sponsors worried about the impact of the reform on their employee benefits plans and other coverage, many of the significant changes will be phased in over time. For example, by Jan. 1, 2014, states will be required to create and maintain health care exchanges to increase access and competition in the insurance marketplace. Other required changes become effective for plan years beginning on or after Sept. 23, 2010 (Jan. 1, 2011 for calendar-year plans) and require immediate action by plan sponsors. In this article, we will focus on what needs to be done in the short-term — and that requires an understanding of which employer sponsored group health plans are “grandfathered” under the legislation and which are not.

The distinction between employer sponsored group health plans in existence as of March 23, 2010 (grandfathered plans) and employer sponsored group health plans adopted after March 23, 2010 or plans that have undergone significant changes since March 23, 2010 (nongrandfathered plans) is significant, since grandfathered plans need not comply with some of the Act’s requirements.

The U.S. Departments of the Treasury, Labor, and Health and Human Services recently issued interim final rules, the long-awaited guidance defining what is a grandfathered plan under the Act. Generally speaking, a grandfathered plan is any group health plan or individual coverage that was in effect on March 23, 2010.

Even if an individual may reenroll in a grandfathered health plan or new employees (and their families) may be added to the plan after March 23, 2010, that does not destroy the plan’s “grandfathered” status. Likewise, an individual who was covered by a grandfathered health plan may add his or her dependents to the plan after March 23, 2010 without negating the plan’s grandfathered status as long as the plan allowed for dependent/family coverage on March 23, 2010.

It’s worth noting that collectively bargained multi-employer and single employer plans in effect on March 23, 2010 are not subject to the Act rules (as amended by the Reconciliation Act) until the date on which the last of the collective bargaining agreements relating to the coverage terminates. At that time, a collectively bargained plan is then subject to health care reform rules and, assuming it remains grandfathered (based on the rules then in effect), it would have to comply with the requirements for grandfathered plans. The Act specifically provides, however, that a collectively bargained plan can be amended early for some or all of the Act’s rules. Such voluntary amendments will not be treated as a termination of the collective bargaining agreement, which might otherwise subject the plan to an earlier compliance deadline.

Okay, now the good stuff — the major changes that currently apply to both grandfathered and non-grandfathered plans include the following:

Plans must offer coverage to children of covered employees until age 26. Plans may no longer impose lifetime dollar limits on the amount of essential health benefits that will be reimbursed. At a minimum, essential health benefits include the items and services covered in the following general categories: ambulatory patient services, emergency services, hospitalization, maternity and newborn care, mental health and substance abuse disorder services, prescription drugs, rehabilitative services and devices, laboratory services, preventive and wellness services, chronic disease management, and pediatric services (including oral and vision care).

Employer sponsored group health plans may continue to impose annual (as opposed to lifetime) limits on reimbursements for essential health benefits between now and Jan. 1, 2014, but those limits must comply with regulations recently issued by the Department of Health and Human Services. For example, the limit for plan years beginning on or after Sept. 23, 2010 but before Sept. 23, 2011 may not be less than \$750,000. Annual limits are prohibited for plan years beginning on or after Jan. 1, 2014.

Preexisting condition exclusions are prohibited for children under the age of 19. Plans may not retroactively rescind an enrollee's coverage except in cases of fraud or intentional misrepresentation of a material fact.

Non-grandfathered plans must comply with the following additional requirements effective for plan years beginning on or after Sept. 23, 2010:

Plans that provide coverage for "emergency services" cannot require prior authorization and must comply with requirements relating to services furnished by out-of-network providers. Plans that require enrollees to designate a primary health care provider must allow enrollees to designate a participating provider of choice (including a pediatrician for a child) and must allow enrollees to access obstetrical and gynecological care without a prior referral. Plans must provide certain pre-

ventive care coverage, including certain immunizations, child preventive care and women's preventive care and screenings, without cost to covered employees (e.g., no copayment or co-insurance). Insured plans will be subject to non-discrimination rules that historically applied only to self-funded plans. Plans must adopt both an internal claims and appeals procedure, and an external review process for coverage decisions.

Navigating the practical and legal issues associated with the decision to either retain or abandon grandfathered plan status is not likely to be a simple process for most employers. How to balance the tension between achieving the employer's human resources objectives and the costs associated with compliance with the Act will need to be undertaken with great care in determining whether or not a group health plan should abandon grandfathered plan status.

It's a beginning. It took Canada 20 years from 1946 to 1966 to organize itself into a system of universal health care. It took Lady Gaga five years from singing on the lower east side in 2003 to the top of the billboards in 2008. We should be so lucky with health care reform in the U.S.



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