

# EBIA Weekly Archives

## Agencies Issue FAQs on Grandfathered Health Plans, Rescissions, Exemptions, and More

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[FAQs About the Affordable Care Act Implementation Part II; FAQs About the Affordable Care Act Implementation Part III]

FAQs Part II: <http://www.dol.gov/ebsa/faqs/faq-aca2.html>

FAQs Part III: <http://www.dol.gov/ebsa/faqs/faq-aca3.html>

The HHS, DOL, and IRS have jointly issued two more sets of FAQs (Parts II and III) on the implementation of health care reform. (For information on previous FAQs on health care reform, see our Checkpoint Newsstand article.) The FAQs in Part II cover a variety of issues including grandfathered health plans, dental and vision excepted benefits, rescissions, and preventive services. Part III has two Q&As addressing exemptions for group health plans with two or fewer employees. Here are some highlights.

- Grandfathered health plans—FAQs Part II. Q1 notes that for a plan that is continuing the same policy, the six changes described in the interim final regulation are the only changes that would cause a loss of grandfather status, and that the agencies are still considering the circumstances under which a change in insurers would not cause a loss of grandfathered status. Q3 explains that for purposes of evaluating whether an employer has decreased its contribution rate by more than five percentage points, a plan that has restructured its coverage tiers will be evaluated by comparing the employer's contribution rate for each new tier to the rate for the corresponding tier on March 23, 2010. Q5 explains that plans may continue to provide wellness incentives through, for instance, premium discounts or additional benefits to reward healthy behaviors, but warns that penalties (such as cost-sharing surcharges) may implicate the six changes that defeat grandfather status and also may violate other nondiscrimination rules, so should be examined carefully. [EBIA Comment: The regulators have now said in two sets of FAQs that they will be addressing circumstances under which plans may change insurers without endangering their grandfathered plan status. Keep in mind, however, that the interim final regulations by their terms provide that if an employer enters into a "new policy, certificate, or contract of insurance" after March 23, 2010, then the new policy, certificate, or contract is not a grandfathered health plan. Until further guidance is issued, employers should proceed with caution.]
- Rescissions—FAQs Part II. Q7 clarifies that health care reform's prohibition on rescissions is not limited to rescissions based on fraudulent or intentional misrepresentations about prior medical history. It points out that plans may correct errors, such as mistakenly covering a part-time employee, by canceling coverage prospectively, but not by retroactively rescinding coverage unless there was some fraud or intentional misrepresentation by the employee. On the other hand, recognizing that plans sometimes reconcile data monthly, the agencies will not, under certain circumstances, consider the retroactive elimination of coverage back to the date of an employee's termination of employment to be a rescission. And, where a plan does not cover ex-spouses (except as required by COBRA), the plan is not notified of a divorce, and no COBRA premium is paid, the agencies will not consider a plan's termination of coverage retroactive to the divorce to be a rescission. [EBIA Comment: This guidance, which confirms unofficial guidance from agency officials, comes just in time to help employers and administrators preparing documents and systems for 2011 plan years.]

- Exemption for Plans With Fewer Than Two Current Employees—FAQs Part III. Q1 explains that, as noted in the preamble to the interim final regulations on grandfathered plans, the HIPAA exemption for group health plans with “less than two participants who are current employees” also exempts such plans (which include retiree-only plans) from certain health care reform mandates. Q2 addresses whether a plan that covers retirees as well as individuals on long-term disability would fit within this exemption. It provides that the agencies intend to issue guidance on this in 2011, and that until such guidance is issued, the agencies will treat these plans as satisfying the exemption. Any more restrictive changes will be prospective.

**EBIA Comment:** This continues the trend of the agencies issuing FAQs to answer questions that arise after regulations have been issued. For more information, see EBIA’s Health Care Reform manual at Sections V.E (“Plans Covering Fewer Than Two Current Employees and Retiree-Only Medical Plans”), VI (“Grandfathered Health Plans”), and X (“PCEs, Coverage and Cost-Sharing Limits, Waiting Periods, and Rescissions”). See also EBIA’s HIPAA manual at Sections VI.F (“Plans Covering Fewer than Two Current Employees”) and XI.G (“No Lifetime or Annual Dollar Limits and Prohibition on Rescission”).

Contributing Editors: EBIA Staff.

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