STRATEGIC HEALTH CARE

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KEY PROVIDER ISSUES IN HEALTH CARE REFORM

May 2010 **GRANDFATHERED AND SELF-INSURED HEALTH PLANS**

The Patient Protection and Affordable Care Act of 2010 (PPACA) created numerous changes to health insurance plans; however, the new law provides exemptions for grandfathered and self-insured plans. Questions remain about which plans will qualify as grandfathered plans; regulations anticipated to be released later in 2010 are expected to bring clarification. Outlined below are the required changes and provisions grandfathered and self-insured health plans are exempt.

Grandfathered Health Plans

PPACA prohibits plans from terminating coverage for individuals under any plan in which he or she currently enrolled. The law "grandfathers" plans covering any individual before March 23, 2010. Grandfathered plans are exempt from adhering to certain requirements in the new law but are subject to the following changes.

- Limit waiting periods to 90 days (effective for plan years beginning on or after January 1, 2014).
- Remove lifetime limits (effective for plan years beginning on or after September 23, 2010).
- Prohibits coverage rescission once enrolled (effective for plan years beginning on or after September 23, 2010).
- Extend coverage to adult children (effective for plan years beginning on or after September 23, 2010), although a grandfathered plan may exclude children who have coverage from another employer for plan years beginning before January 1, 2014.
- Remove annual limits (effective for plan years beginning on or after January 1, 2014).
- Remove pre-existing condition exclusions (effective for plan years beginning on or after September 23, 2010 for those under 19, January 1, 2014 for everyone else).
- Adopt the uniform explanation of coverage documents created by the Secretary of Health and Human Services.

Self-Insured Health Plans

Some large multi-state employers operate self-insured health plans as opposed to purchasing coverage from an insurance company. When offering self-insured health plans, large employers pay the costs to cover claims by participating employees plus administration of the plan directly. The Employee Retirement Income Security Act (ERISA) issued federal guidelines that standardize the minimum requirements a self-insured plan must have as well as preempted these plans from certain state regulations. The federal standards were established to ensure a firm's employee benefits are subject to the same regulations across all states.

Self-funded ERISA plans that are "grandfathered" under the PPACA provisions will be exempt from many of the law's provisions. If a self-funded ERISA plan is not grandfathered, or loses its grandfathered status, the plan will be subject to all of the PPACA's rules applicable to "group health plans" including all of the provisions applicable to "grandfathered" plans (listed above) as well as the requirements listed below.

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- Cover preventive health services,
- Submit annual reports to the government,
- Comply with cost-sharing limitations,
- Adhere to rules pertaining to internal and external claims procedures,
- Follow prohibitions on limiting an individual's choice of primary care provider,
- Cover certain emergency services,
- Provide access to pediatric care services,
- Provide access to obstetrics and gynecology services, and
- Cover participation in clinical trials.

The health reform law specifically does not apply to self-funded ERISA plans for certain provisions listed below.

- The plan does not need to offer "essential health benefits package," including the related cost-sharing limits. This mandate is limited to insured plans (1) in the small and individual group markets and (2) those that seek to be deemed a "qualified health plan" offered on an exchange.
- New participant disclosure requirements are not required.
- These plans are not subject to the "risk adjustment" payments—payable if the plan's experience is above average, receivable if the plan's experience is below average.