



Information Every Business Needs to Know

# HR & Benefits Advisor

July 2010

Law Offices Of Travis Bowen, PC

<b>In this Issue</b>
<a href="#"><u>Keeping Your Plan's Grandfathered Status</u></a>
<a href="#"><u>Interview Questions</u></a>
<a href="#"><u>COBRA Subsidy Widely Used</u></a>
<a href="#"><u>COBRA Subsidy Expires</u></a>
<a href="#"><u>Model Notices for Health Care Reform</u></a>
<a href="#"><u>Accepting Applications for ERFP</u></a>
<a href="#"><u>Interim Final Rules</u></a>

## DOL Releases Model Notices for Employers Implementing Health Care Reform



The U.S. Department of Labor's Employee Benefits Security Administration has released a number of Model Notices for employer-sponsored health plans to comply with requirements of the Affordable Care Act. Model notice language is

## Keeping Your Plan's Grandfather Status

In the June newsletter, we covered the general concept of grandfathered plans under health care reform (those plans which were in place on March 23, 2010), and [which parts of the new health care law apply to grandfathered plans](#), such as dependent coverage to age 26 and children's pre-existing conditions. We also noted that we were awaiting government guidance as to how a plan can be changed without losing grandfathered status. On June 17, 2010, the Departments of Treasury, Labor and Health and Human Services issued interim final rules that made important clarifications on maintaining grandfather status. In evaluating whether to keep your plan, it is important to review the following rules related to maintaining grandfather status:



The regulation allows employers and insurers to make "routine" changes to plans without them losing grandfather status. Routine changes will include cost adjustments to keep pace with medical inflation, adding new benefits, making modest adjustments to existing benefits, voluntarily adopting new consumer protections under the new law, or making changes to comply with state or other federal laws. Under the rules, plans will lose their "grandfather" status if they choose to **significantly cut benefits or increase out-of-pocket spending for consumers**. However, **premium changes are not taken into account** when determining whether or not a plan is grandfathered.

Compared to their policies in effect on March 23, 2010, grandfathered plans:

- **Cannot Significantly Cut or Reduce Benefits:** For example, if a plan decides to no longer cover care for people with diabetes, cystic fibrosis or HIV/AIDS.
- **Cannot Raise Co-Insurance Charges:** Typically, co-insurance requires a patient to pay a fixed percentage of a charge (for example, 20% of a hospital bill). Grandfathered plans cannot increase this percentage.
- **Cannot Significantly Raise Co-Payment Charges:** Frequently, plans require patients to pay a fixed-dollar amount for doctor's office visits and other services. Compared with the copayments in effect on March 23, 2010,

now available from the Department of Labor for the following:

### **Opportunity to Enroll in Connection with Extension of Dependent Coverage to Age 26**

The interim final regulations extending dependent coverage to age 26 provide transitional relief for a child whose coverage ended, or who was denied coverage (or was not eligible for coverage) under a group health plan or health insurance coverage because, under the terms of the plan or coverage, the availability of dependent coverage of children ended before the attainment of age 26. This enrollment opportunity (including the written notice) must be provided not later than the first day of the first plan year beginning on or after September 23, 2010. For more information and to view the Model Notice, please [click here](#).

### **Patient Protection Model Disclosure**

Individuals enrolled in a plan or health insurance coverage must be notified of their rights to (1) choose a primary care provider or a pediatrician when a plan or issuer requires designation of a primary care physician; or (2) obtain obstetrical or gynecological care without prior authorization. This notice must be provided no later than the first day of the first plan year beginning on or after September 23, 2010. For more information and to view the Model Notice, please [click here](#).

### **Model Language Notice Lifetime Limit No Longer Applies and Enrollment Opportunity**

Plans and issuers are

grandfathered plans will be able to increase those co-pays by no more than the greater of \$5 (adjusted annually for medical inflation) or a percentage equal to medical inflation plus 15 percentage points. For example, if a plan raises its copayment from \$30 to \$50 over the next 2 years, it will lose its grandfathered status.

- **Cannot Significantly Raise Deductibles:** Many plans require patients to pay the first bills they receive each year (for example, the first \$500, \$1,000, or \$1,500 a year). Compared with the deductible required as of March 23, 2010, grandfathered plans can only increase these deductibles by a percentage equal to medical inflation plus 15 percentage points.
- **Cannot Significantly Lower Employer Contributions:** Many employers pay a portion of their employees' premium for insurance and this is usually deducted from their paychecks. Grandfathered plans cannot decrease the percent of premiums the employer pays by more than 5 percentage points (for example, decrease their own share and increase the workers' share of premium from 15% to 25%).
- **Cannot Add or Tighten an Annual Limit on What the Insurer Pays:** Some insurers cap the amount that they will pay for covered services each year. If they want to retain their status as grandfathered plans, plans cannot tighten any annual dollar limit in place as of March 23, 2010. Moreover, plans that do not have an annual dollar limit cannot add a new one unless they are replacing a lifetime dollar limit with an annual dollar limit that is at least as high as the lifetime limit.
- **Cannot Change Insurance Companies:** If an employer decides to buy insurance for its workers from a different insurance company, this new insurer will not be considered a grandfathered plan. This does not apply when employers that provide their own insurance to their workers switch plan administrators or to collective bargaining agreements.

### **Disclosure Requirement - Model Notice**

The regulation on grandfathered plans requires a plan to disclose to consumers every time it distributes materials whether the plan believes that it is a grandfathered plan and therefore is not subject to some of the additional requirements of the Affordable Care Act. The plan must also provide contact information for enrollees to have their questions and complaints addressed. Model language that can be used to satisfy this disclosure requirement is [available here](#), and is also provided in the interim final rules.

### **Recordkeeping**

Under the interim final rules, to maintain status as a grandfathered health plan, a plan or issuer must also maintain records documenting the terms of the plan or health insurance coverage that were in effect on March 23, 2010, and any other documents necessary to verify, explain, or clarify its status as a grandfathered health plan.

### **Ways Grandfather Status Can Be Revoked**

To prevent health plans from using the grandfather rule to avoid providing consumer protections, the regulation:

required to give written notice that the lifetime limit on the dollar value of all benefits no longer applies and that an individual, if covered, is once again eligible for benefits under the plan. Additionally, if the individual is not enrolled in the plan or health insurance coverage, or if an enrolled individual is eligible for but not enrolled in any benefit package under the plan or health insurance coverage, then the plan or issuer must also give such an individual an opportunity to enroll that continues for at least 30 days (including written notice of the opportunity to enroll). The notices and enrollment opportunity must be provided beginning not later than the first day of the first plan year beginning on or after September 23, 2010. For more information and to view the Model Notice, please [click here](#).

To visit the Department of Labor's webpage dedicated to the Affordable Care Act, please [click here](#). For more on recent developments under health care reform, visit the HR & Benefits Essentials **2010 Health Care Reform Section** by [clicking here](#).

---

## Applications for Early Retiree Reinsurance Program Accepted as of June 29, 2010



- Revokes a plan's grandfathered status if it forces consumers to switch to another grandfathered plan that, compared to the current plan, has less benefits or higher cost sharing as a means of avoiding new consumer protections
- Revokes a plan's grandfathered status if it is bought by or merges with another plan simply to avoid complying with the law.

For more information on this regulation, please see this [Fact Sheet on the Affordable Care Act and "Grandfathered" Health Plans](#). Please also view [FAQs on Grandfathered Plans](#). To view the interim final rules, please [click here](#).

For more on grandfathered plans generally, including a **timeline of required key changes to grandfathered plans**, please [click here](#).

### Interview Questions — What You Need to Know

As hiring begins to rebound, many small businesses may once again be thinking about recruitment and candidate selection. And, of course, one of the most important parts of the process is conducting the interview.

Whether you are a small business owner who conducts your own interviews, manager of a department or experienced HR professional, the following is a quick “refresher” on the do's and don'ts related to interview questions.



### Questions You May Ask

Interview questions should be job-related, and provide insight into the candidate's ability to perform the essential functions of the position you are filling. They can also provide certain information about the interviewee. Some examples of acceptable job-related inquiries include:

- Job Requirements: desired position, salary, full time or part time, date of availability to start.
- Essential functions of the job: Essential functions are the fundamental job duties that the employee must be able to perform on his or her own or, in the case of a person with a disability, with the help of a reasonable accommodation.
- Willingness to travel
- Educational background
- Skills: word processing, computer languages, etc.
- References
- Eligibility to work in the United States

### Questions to Avoid

Because of the numerous federal, state, and local anti-discrimination laws that govern the employment process, direct and indirect

The Department of Health and Human Services' Office of Consumer Information and Insurance Oversight (OCIIO) has announced it will begin accepting applications for the Early Retiree Reinsurance Program (ERRP).

The Early Retiree Reinsurance Program will reimburse employers for medical claims for retirees age 55 and older who are not eligible for Medicare, and their spouses, surviving spouses, and dependents. Employers who provide health coverage for early retirees are eligible to apply. Reimbursements will be available for 80% of medical claims costs for health benefits between \$15,000 and \$90,000. Program participants will be able to submit claims for medical care going back to June 1, 2010.

June 29, 2010 was the first day applications started being accepted. A draft application was made available June 7, and OCIIO has hosted several stakeholder outreach calls to explain the program. Additional application assistance, including a webinar, will be available online this week.

### Applications

[Application instructions](#) and the [Application](#) are [available here](#), along with an updated Fact Sheet, [Application Submission Do's and Don'ts](#), FAQs and other guidance. You can also visit [www.hhs.gov/ociio](http://www.hhs.gov/ociio) to access the materials.

---

## Interim Final Rules Cover Market Reforms

inquiries concerning an interviewee's race, color, religion, sex, national origin, age, disability, genetic information, military service, or any other protected class status should be avoided. In addition, some states have strict limitations on pre-employment inquiries about criminal backgrounds, in particular, arrests not leading to convictions. Questions to avoid include:

- How old are you?
- What is your nationality? Or what is the origin of your name?
- What is your race?
- Were you or are you currently disabled?
- Are you taking any medications?
- What is your religion?
- Have you ever been arrested?
- Do you have a drinking problem?

### Interviewing in Compliance with the Americans with Disabilities Act

The Americans with Disabilities Act (ADA) goes one step further than the traditional civil rights laws that prohibit employment discrimination on the grounds of race, sex, age, or other protected classes. Under the ADA, it is not enough that an employer simply does not discriminate. Employers must, under certain situations, also take steps to make "reasonable accommodations" for individuals with disabilities. To avoid charges of discrimination, employers should also adhere to the following guidelines when interviewing applicants with disabilities:

- Prepare for the interview by clearly understanding the essential job functions of the position in question.
- Employers may ask about an applicant's ability to perform specific job functions. For example, an employer may state the physical requirements of a job (such as the ability to lift a certain amount of weight, or the ability to climb ladders), and ask if an applicant can satisfy these requirements.
- Employers may ask about an applicant's non-medical qualifications and skills, such as the applicant's education, work history, and required certifications and licenses
- Don't ask questions about an applicant's disabilities.

Additionally, many state civil rights agencies have their own guidelines on pre-employment inquiries based on both federal and state nondiscrimination laws. Be sure to check on any additional restrictions your state may impose on job interview questions. For more information on the ADA compliant interview, please [click here](#). To view a list of state labor offices, please [click here](#).

### Treasury Department Report - COBRA Subsidy Widely Used by Middle Class

According to a recent [Treasury Department survey](#), federal subsidies of health insurance premiums for the unemployed were widely used by the middle



## Taking Effect As Early as 2010

The U.S. Departments of Treasury, Labor and Health and Human Services have issued [interim final rules](#) under the Affordable Care Act. These rules relate to:

- Preexisting condition exclusions of children under 19,
- Lifetime and annual limits,
- Rescissions of coverage, and
- Certain other provisions.

To view a Fact Sheet on the rules, please [click here](#). The rules issued are now available for public comment at [www.regulations.gov](http://www.regulations.gov).

---

class during the recession. Many laid-off workers and their families maintained their health coverage as a result of the subsidy.

The American Recovery and Reinvestment Act of 2009 (ARRA) established a tax credit that paid 65 percent of the cost of health insurance premiums for eligible unemployed workers and their family members who maintained their health coverage through the federal COBRA continuing coverage program. Usually, individuals on COBRA coverage are required to pay up to 102% of the total cost of premiums. The Treasury Department estimates that for a typical family nationwide, the ARRA subsidy reduced the cost of COBRA from about \$13,500 to \$4,725.

The Treasury analysis is one of the earliest reports on the profile of unemployed individuals who obtained continuing health insurance coverage through the ARRA COBRA subsidy. The study surveyed more than 6,000 New Jersey workers receiving Unemployment Insurance in the fall and winter of 2009. The report found that between one-quarter and one-third of eligible unemployed workers enrolled in subsidized COBRA. In addition, roughly 15% of Unemployment Insurance beneficiaries received health insurance coverage through COBRA.

The report concludes that the subsidy appears to have been especially important for maintaining health coverage for middle-class families during the recession, and likely reduced the number of Americans who otherwise would have gone uninsured during the recession. A separate publication from the Treasury Department estimates that up to 2 million households were provided premium assistance in 2009, and over 300,000 claims were filed by employer tax reporting units through early 2010. The Treasury Department suggests that the availability of the program may have significantly slowed the growth of the uninsured population, which had been significantly increasing through Feb. 2009.

To view the Treasury Department report, please [click here](#).

## COBRA Subsidy Eligibility Period Expires - ARRA Notices No Longer Apply

On June 1, 2010, the eligibility period to qualify for COBRA premium reduction under ARRA (as extended by the Continuing Extension Act of 2010) expired. Consequently, employers and plan administrators are not required to provide subsidies for COBRA premiums to workers terminated on or after June 1, 2010, unless and until a further extension of the ARRA COBRA



subsidy is enacted.

### **Model Notices for Use On or After June 1, 2010**

Employers and administrators should note that a further extension of the COBRA premium reduction under ARRA may still occur. However, with no further extensions, employers and administrators should use the [Model General Notice](#) and [Model Election Notice](#) provided by the DOL, for workers who are terminated on or after June 1, 2010. Remember, involuntary terminations that occurred at any time from September 1, 2008, through May 31, 2010 may have been qualifying events entitling such terminated workers to COBRA premium reductions and applicable notices. Individuals are encouraged to seek assistance regarding Notice Requirements by calling the Employee Benefits Security Administration toll-free at 1-866-444-3272. HR & Benefits Essentials will provide updates on any ARRA COBRA extensions as they occur.

**Law Offices of Travis Bowen, PC**  
**136 East South Temple Suite 1050 Salt Lake City, UT 84111**  
**(801) 364-0123**  
[www.bowenlaw.com](http://www.bowenlaw.com)