FREQUENTLY ASKED QUESTIONS ABOUT THE NOTICE OF PROPOSED RULEMAKING REGARDING GRANDFATHERED GROUP HEALTH PLANS AND GRANDFATHERED GROUP HEALTH INSURANCE COVERAGE

Q1: Why are the Departments of Labor, Health and Human Services, and the Treasury (collectively, the Departments) releasing a proposed rule regarding grandfathered group health plans and grandfathered group health insurance coverage?

In general, section 1251 of the Patient Protection and Affordable Care Act (ACA) provides that certain group health plans and health insurance coverage existing as of March 23, 2010, the date of enactment of the ACA, (referred to collectively in the statute as grandfathered health plans) are subject to only certain provisions of the ACA. The Departments share interpretive jurisdiction over this provision and jointly issued interim final regulations to implement its requirements in June 2010. In November 2015, the Departments issued final regulations that finalized the interim final regulations without substantial change.[1] Among other things, the 2015 final regulations identified certain types of changes that, if made to a grandfathered plan or coverage, would result in a loss of grandfather status. These types of changes generally include increases in cost-sharing above certain thresholds, decreases in employer contributions, and elimination of substantially all benefits to diagnose or treat a condition.

On February 25, 2019, the Departments issued a request for information regarding grandfathered group health plans and grandfathered group health insurance coverage to gather input from the public in order to better understand the challenges that group health plans and group health insurance issuers face in avoiding a loss of grandfather status, and to determine whether there are opportunities for the Departments to assist such plans and issuers, consistent with the law, in preserving their grandfather status. Based on comments received from stakeholders in response to the 2019 request for information, the Departments have developed a proposed rule that would, if finalized, provide greater flexibility for grandfathered group health plans and issuers of grandfathered group health insurance coverage to make certain changes to cost-sharing requirements without causing a loss of grandfather status. The proposed rule would not affect requirements for grandfathered individual health insurance coverage to maintain its grandfather status.

Q2: What changes would the proposed rule make to the 2015 final regulations?

If finalized, the proposed rule would amend the 2015 final regulations in two ways:

1. *Flexibility for High Deductible Health Plans (HDHP)*: The proposed rule provides that grandfathered group health plans and grandfathered group health insurance coverage that are HDHPs under Internal Revenue Code section 223(c)(2) may make increases to fixed-amount cost-sharing requirements (such as deductibles) that would otherwise cause a loss of grandfather status without losing grandfather status, but only to the extent those changes are necessary to comply with the requirements to maintain their status as an HDHP. This change would ensure that participants and beneficiaries in these plans are able to maintain their eligibility to contribute to a health savings account.

[1] 80 FR 72191 (November 18, 2015).

2. *Alternative inflation adjustment for fixed-amount cost-sharing increases*: The 2015 regulations permit increases in fixed-amount cost-sharing requirements (such as copayments, deductibles, and out-of-pocket maximums) that do not exceed certain thresholds, determined by reference to a Consumer Price Index measure of medical inflation. Under the proposed rule, permitted increases would be determined, in part, by reference to this same measure or by reference to the most recently published "premium adjustment percentage," whichever is greater. The premium adjustment percentage is published annually by HHS and reflects the cumulative, historic growth from 2013 through the preceding calendar year in premiums for private health insurance, excluding Medigap and property and casualty insurance. This alternate inflation measure would better account for changes in the costs of health coverage over time.

The additional flexibility provided under the proposed rule would be available only for changes that are effective on or after the effective date of any final rule.

Q3. Are the Departments requesting public comments on the proposed rule?

Yes, the proposed rule (RIN 1210-AB89) is being issued with a request for public comments. Comments may be submitted through regulations.gov and the deadline to submit comments is August 14, 2020.