CHURCH ALLIANCE

Acting on Behalf of Church Benefits Programs

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By electronic submission (http://www.regulations.gov)

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9923-NC
P.O. Box 8013
Baltimore, MD 21244-1850

Re: CMS-9923-NC

To Whom It May Concern:

The Church Alliance is submitting this letter in response to the Request for Information Regarding Grandfathered Group Health Plans and Grandfathered Group Health Insurance Coverage (the "Request"), published on February 25, 2019 by the Department of the Treasury ("Treasury"), Department of Labor ("DOL"), and Department of Health and Human Services ("HHS") (collectively, "the Departments") at 84 Fed. Reg. 5969. The Church Alliance ("we") welcome(s) the opportunity to comment.

Background

The Church Alliance is a coalition of the chief executive officers of 37 church benefits organizations ("Church Alliance Organizations") affiliated with mainline and evangelical Protestant denominations, three national Jewish entities, and Catholic schools and institutions. The benefit programs offered by these organizations provide retirement and health benefits to more than one million clergy, church lay workers, and their family members at more than 155,000 churches, synagogues, and church-associated organizations across the country.

For over fifty years, Church Alliance Organizations have offered health benefits through denominational health plans (health plans sponsored or maintained by a religious denomination or its benefits organization and that are described in Section 414(e) of the Internal Revenue Code ("Code")). Denominational health plans generally are self-funded. However, unlike other employer self-funded health plans, denominational health plans are composed of many small employers and, in some instances, individuals (e.g. self-employed clergy).

The application of Federal and state benefit laws to denominational health plans presents different challenges than those of a typical single or multi-employer group health plan. Each denomination has a unique polity (governance) established to reflect its theological tenets. The governance structures of the Church Alliance members' denominations range from hierarchical to congregational in nature. While in the hierarchical structure power may be exercised from the top down, in congregational structures each congregation may be completely independent or power may be exercised from the bottom up (i.e. the congregations control the denomination). Each denomination has a different level of authority and control over its individual churches as employers. As a result, in some denominations, the health plan sponsor is the denomination, which has the ability to mandate employer coverage decisions; in other denominations, the sponsors are the individual churches and ministries, and the Church Alliance Organization only can control the plan design and administration but not the rules at the employer level; yet others have structures in between these two extremes.

Consistent with the Departments' understanding that the number of grandfathered group health plans has declined each year since the enactment of the Patient Protection and Affordable Care Act ("PPACA"), most group health plans maintained or sponsored by Church Alliance Organizations no longer are grandfathered.

Maintaining (or Relinquishing) Grandfathered Status

In this section of the letter, the Church Alliance is responding to several of the specific questions asked by the Departments related to maintaining or relinquishing grandfathered status.

1. ***What actions could the Departments take, consistent with the law, to assist group health plans sponsors and group health insurance issuers preserve the grandfathered status of a group health plan or coverage?***

Answer: As described above, each denomination has a unique polity reflective of its religious beliefs, which can impact the denominational health plan sponsor's ability to control the actions of each employer in the denominational health plan. As a result, it would be helpful if the Departments would exercise their authority and discretion to consider polity (or the level of control by the plan sponsor over employers in the plan) when determining whether a group health plan has preserved its grandfathered status. For example, if the denomination does not control decisions at each employer, but has not changed the plan design or rules, we suggest that the Departments may consider the grandfathered status to be preserved, as long as employer practices have not been abusive.

This approach would be consistent with information provided to the Church Alliance at a meeting with representatives of the Departments on June 14, 2010. This understanding was memorialized in a letter from the Church Alliance to the Departments dated June 16, 2010.

2. ***What challenges do group health plan sponsors and group health insurance issuers face regarding retaining the grandfathered status of a plan or coverage? Does any particular requirement(s) for maintaining grandfathered status create more challenges than others, and if so, how could the requirement(s) be modified to reduce such challenges?***

Answer: As described, the greatest challenge faced by a denominational group health plan sponsor regarding retaining the grandfathered status of a plan can be, depending on polity, the lack of control over each church or ministry participating in the plan. The most challenging regulatory requirement with respect to grandfathering is the regulation that limits decreases in employer contribution rates (26 C.F.R. §54-9815-1251(g)(1)(v)), because the denomination does not control payroll, so does not know or control whether the employee paid any portion of the contribution (i.e. premium) in 2010, nor does it know about or control this now.

The denominational plan administrator will know the contribution rates that it charges employers, and can and will continue to charge employers the entire contribution. The denominational plan also can and will specify the benefits, networks, cost-sharing (including coinsurance, co-pays, deductibles, and out-of-pocket limits), annual and lifetime limits, and many other aspects that can be controlled at a plan level, so we respectfully request that the factors within the sponsor's control be the only factors that are considered in determining whether a denominational benefit plan has remained grandfathered. If that request cannot be granted, we request that denominational plans be judged based on whether the plan administrator decreases employer contribution rates beyond the limits specified.

3. ***For group health plan sponsors and group health insurance issuers that have chosen to preserve grandfathered status of their plans or coverage, what are the primary reasons for doing so? If grandfathered status is preserved so that particular PPACA requirements will not apply to the plan, please specify the particular PPACA requirements not included in the grandfathered plan and explain any related concerns.***

Answer: The Church Alliance supports the religious liberty principle that no church plan should be forced to violate its religious beliefs in the provision of health benefits. Therefore, even though many Church Alliance Organizations agree with providing the wide range of preventive services required by section 2713 of PPACA, the Church Alliance is supportive of its members who are opposed to providing contraceptive benefits or a category of such benefits for religious reasons. The primary reason for maintaining grandfathered status has been a denomination's opposition based on religious beliefs to the provision of the full range of FDA-approved contraceptive services and the uncertainty about the regulations, religious exemptions, and accommodations to that PPACA requirement for non-grandfathered plans.

4. ***What are the reasons why participants and beneficiaries have remained enrolled in grandfathered group health plans if alternatives are available?***

Answer: Many Church Alliance Organizations support providing all the preventive services required by PPACA. However, participants and beneficiaries have remained enrolled in grandfathered church group health plans so they are not forced to pay for contraceptive services to which they and their denomination have a religious objection.

5. ***What are the costs, benefits, and other factors considered by plan sponsors and health insurance issuers when considering whether to retain grandfathered status of their plans or coverage?***

Answer: A benefit of retaining grandfathered status is the ability to continue to act consistently with religious beliefs, due to the exemption from the contraceptive services mandate for grandfathered plans. However, this comes with a significant cost to plan sponsors. Plan sponsors of grandfathered plans lose flexibility in plan design. Such plan sponsors are required to refrain from making plan design changes in an industry that is constantly evolving, leaving them at a disadvantage compared to the market.

General Information about Grandfathered Group Health Plans and Group Health Insurance Coverage

In this section of the letter, the Church Alliance is responding to two of the specific questions asked by the Departments related to general information about grandfathered group health plans.

1. ***Do group health plan sponsors and group health insurance issuers that have chosen to retain grandfathered status for certain plans, benefit packages, or policies also offer other plans, benefit packages, or policies that are not grandfathered? If so, why?***

Answer: We are aware of one grandfathered church health plan that also offers other non-grandfathered plan options. This denomination has a religious objection to PPACA's contraceptive services requirement. However, an employer in this church health plan may choose a non-grandfathered health plan option if it determines it is exempt as a religious employer, or if the employer determines it is an eligible organization, and has filed a religious objection per the accommodations provided in rulemaking. This church health plan offers both grandfathered and non-grandfathered health plan options due to the uncertainty resulting from legal challenges to the regulations issued in connection with religious exemptions and accommodations to the preventive services requirements of section 2713 of PPACA.

2. ***What are the typical differences in benefits, cost-sharing, and premiums (including employer contributions, employee organization contributions, and employee contributions) associated with grandfathered group health plans and grandfathered group health insurance coverage compared to non-grandfathered group health plans?***

Answer: In our limited experience, a difference between a grandfathered group health plan and a non-grandfathered group health plan is that the grandfathered group health plan may have lower deductibles, but require the payment of higher contributions (premiums). In addition, the non-grandfathered group health plan may have a "value-based" design, offering financial incentives for participants to use high-quality providers or choose a more effective course of treatment.

Conclusion

Thank you for the opportunity to comment. The Church Alliance urges that any enforcement of grandfathering requirements on church plans take into account the polity of the church, especially if there are religious reasons for the grandfathering. The Church Alliance welcomes the possibility that the Departments will exercise their discretion to address the challenges facing grandfathered health plans.

Please contact the undersigned at (202) 778-9128 if you have questions or wish to discuss any of this information further.

Sincerely,

Karishma Shah Page
Partner, K&L Gates LLP
On behalf of the Church Alliance