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Subject: Did Unions Just Obtain Another Backroom Health Care Deal?

In reviewing the [rule](#) posted online a little bit ago, it would appear that the Administration may have granted unions significant advantage they denied to small businesses. Specifically, section (a)(2)(ii) of the regulation provides that any “new policy, certificate, or contract of insurance after March 23, 2010” would trigger loss of “grandfathered” status. This means that small businesses and others who purchase insurance products on the open market would NOT be able to change insurance companies and retain their grandfathered status, giving them a significant disadvantage in negotiating with their current carrier. (Large companies and others who self-insure their products would be able to change their third-party administrators without losing “grandfathered” status.)

By contrast, section (f) of the regulation provides that collectively bargained plans WOULD be able to switch carriers, until such time as the last collectively bargained agreement in effect on March 23, 2010 terminates. This would give the union plans more negotiating leverage to find a plan keeping cost increases in check – leverage that the Administration apparently wanted to deny to small businesses.

Compare the language of these two examples, from pages 77 and 82, respectively, of the regulations. How is this not a special interest deal just for unions?

Example 1. (i) Facts. A group health plan **not maintained pursuant to a collective bargaining agreement** provides coverage through a group health insurance policy from Issuer X on March 23, 2010. For the plan year beginning January 1, 2012, the plan enters into a new policy with Issuer Z.

(ii) Conclusion. In this Example 1, for the plan year beginning January 1, 2012, the group health insurance coverage issued by Z **is not a grandfathered health plan** under the rules of paragraph (a)(1)(ii) of this section because the policy issued by Z did not provide coverage on March 23, 2010.

Example 1. (i) Facts. A group health plan maintained **pursuant to a collective bargaining agreement** provides coverage through a group health insurance policy from Issuer W on March 23, 2010. The collective bargaining agreement has not been amended and will not expire before December 31, 2011. The group health plan enters into a new group health insurance policy with Issuer Y for the plan year starting on January 1, 2011.

(ii) Conclusion. In this Example 1, the group health plan, and the group health insurance

policy provided by Y, **remains a grandfathered health plan** with respect to existing employees and new employees and their families because the coverage is maintained pursuant to a collective bargaining agreement ratified prior to March 23, 2010 that has not terminated.

Separately, it's also worth noting that my preliminary read of the regulations shows that very little has changed from the draft that leaked on Thursday night/Friday – and the unchanged analysis of 51% of workers losing their current coverage by 2013 confirms that. If anything, the Administration only added MORE restrictions on the ability to remain a “grandfathered” plan. This is far from the line the White House [attempted to use](#) when the regulations leaked late last week that the draft was “an early version undergoing revision...”

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