



HEALTH CARE REFORM: GRANDFATHERED HEALTH PLAN REGULATIONS

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Patient Protection and Affordable Care Act

- The Patient Protection and Affordable Care Act (the “Act”), enacted March 23, 2010, is designed to ensure that Americans can their current health care coverage if they like it.
- The Act “balances the objective of preserving the ability of individuals to maintain their existing coverage with the goals of ensuring access to affordable essential coverage and improving the quality of coverage.”
- To accomplish this goal, many of the Act’s mandates do not apply to “grandfathered” health plans.
- According to HHS, plans will lose their grandfathered status “if they choose to significantly cut benefits or increase out-of-pocket spending for consumers.”

Grandfathered Health Plans

- The Act did not address at what point changes to a plan or health insurance coverage in which an individual was enrolled on March 23, 2010, are significant enough to cause the plan or insurance coverage to cease to be a grandfathered plan.

[The Regulations]

- The regulations were published on June 17, 2010.
- They are designed to ease the transition of the healthcare industry into the reforms established by the Act by allowing for gradual implantation of reforms through a reasonable grandfathering rule.

Grandfathered Health Plans

- Grandfathered health plan coverage means coverage provided
 - by a group health plan or a group or individual health insurance issuer
 - in which an individual was enrolled on March 23, 2010
 - (for as long as it maintains that status under the rules of this section).

Enrollment of New Individuals

- It is not necessary that the same person(s) be covered under the plan or group health insurance; only that the plan or group continuously cover someone.
- Family members of employees may enroll in the plan without it losing its grandfather status.
- New employees and their families may enroll in a plan without it losing its grandfather status.

[Anti-Abuse Rules]

- The principle purpose of a merger, acquisition or business restructure cannot be to cover new individuals under a plan or policy.
- Individuals are switched to a different plan or insurance policy that, compared to their current plan, has less benefits or higher cost sharing, without a bona fide employment based reason.

[Change Of Insurance Carriers]

- If an employer or employee organization enters into a new policy, certificate or contract of insurance after March 23, 2010, then the new policy, certificate or contract is not a grandfathered health plan.
- This applies to a change in insurer, not a change in third party administrator for self-funded plans.

Collective Bargaining Agreements

- Coverage under a collective bargaining agreement that was ratified before March 23, 2010, may maintain its grandfathered status until it is terminated.

[Prohibited Changes]

- Cannot Significantly Cut or Reduce Benefits
- Cannot Raise Co-Insurance
- Cannot Significantly Raise Co-Payment Charges
- Cannot Significantly Raise Deductibles
- Cannot Significantly Lower Employer Contributions
- Cannot Add or Tighten an Annual Limit

Elimination of Benefits

- The elimination of all or substantially all benefits to diagnose or treat a particular condition causes a plan or insurance coverage to cease being a grandfathered plan.
- Elimination of benefits for any necessary element to diagnose or treat a condition is considered the elimination of all or substantially all benefits to diagnose or treat a particular condition.
- Example - A health plan provides benefits for a particular mental health condition, the treatment for which is a combination of counseling and prescription drugs. Subsequently, the plan eliminates benefits for counseling.

[Co-Insurance Increase]

- Any increase, measured from March 23, 2010, in a percentage cost-sharing requirement (such as an individual's co-insurance requirement) causes a plan or insurance coverage to cease to be a grandfathered plan.

[Co-Payment Increases]

- Any increase in a co-payment that is more than \$5.00 (adjusted annually for medical inflation) or a percentage equal to medical inflation plus 15 percentage points causes a plan or insurance coverage to cease to be a grandfathered plan.

Co-Payment Increases

- On March 23, 2010, plan has a copayment requirement of \$30 per office visit for specialists. The plan is subsequently amended to increase the copayment requirement to \$40.
- Within the 12-month period before the \$40 copayment takes effect, the greatest value of the overall medical care component of the CPI-U (unadjusted) is 475.
- The increase in the copayment from \$30 to \$40, expressed as a percentage, is 33.33% ($40 - 30 = 10$; $10 \div 30 = 0.3333$; $0.3333 = 33.33\%$).
- Medical inflation from March 2010 is 0.2269 ($475 - 387.142 = 87.858$; $87.858 \div 387.142 = 0.2269$).
- The maximum percentage increase permitted is 37.69% ($0.2269 = 22.69\%$; $22.69\% + 15\% = 37.69\%$).
- Because 33.33% does not exceed 37.69%, the change in the copayment requirement at that time does not cause the plan to cease to be a grandfathered health plan.

Increase in Deductibles

- Any requirement other than a copayment (for example, deductible or out-of-pocket limit), determined as of the effective date of the increase, causes a plan to cease to be a grandfathered plan, if the total percentage increase in the cost-sharing requirement measured from March 23, 2010 exceeds medical inflation plus 15 percentage points.

Changes to Employer Contributions

- A plan loses its grandfathered status if the employer or employee organization decreases its contribution rate based on costs of coverage (or on a formula) towards the cost of any tier of coverage for any class of similarly situated individuals by more than five percentage points below the contribution rate for the coverage period that includes March 23, 2010.

Changes to Employer Contributions

- On March 23, 2010, a self-insured plan provides two tiers of coverage—self-only and family. The employer contributes 80% of the cost of coverage for self-only and 60% of the cost of coverage for family. Subsequently, the employer reduces the contribution to 50% for family coverage, but keeps the same contribution rate for self-only coverage.
- The decrease of 10 percentage points for family coverage in the contribution rate based on cost of coverage causes the plan to cease to be a grandfathered plan.
- The fact that the contribution rate for self-only coverage remains the same does not change the result.

Changes to Lifetime & Annual Limits

- A plan cannot impose an overall annual or lifetime limit on benefits if it did not have one prior to March 23, 2010.
- If a plan had a lifetime limit but no annual limit, it cannot adopt an annual limit that is lower than the value of the lifetime limit on March 23, 2010.
- A plan cannot decrease the dollar value of the annual limit after March 23, 2010.

Disclosure of Grandfather Status

- To maintain status a grandfathered plan must include a statement, in any plan materials provided to a participant or beneficiary describing the benefits provided under the plan, that the plan believes it is a grandfathered plan within the meaning of Section 1251 of the PPACA.
- Must provide contact information for questions and complaints.

Model Disclosure Language

This [group health plan or health insurance issuer] believes this [plan or coverage] is a “grandfathered health plan” under the Patient Protection and Affordable Care Act (the Affordable Care Act). As permitted by the Affordable Care Act, a grandfathered health plan can preserve certain basic health coverage that was already in effect when that law was enacted. Being a grandfathered health plan means that your [plan or policy] may not include certain consumer protections of the Affordable Care Act that apply to other plans, for example, the requirement for the provision of preventive health services without any cost sharing. However, grandfathered health plans must comply with certain other consumer protections in the Affordable Care Act, for example, the elimination of lifetime limits on benefits. Questions regarding which protections apply and which protections do not apply to a grandfathered health plan and what might cause a plan to change from grandfathered health plan status can be directed to the plan administrator at [insert contact information].

Documentation Requirements

- To maintain the status as a grandfathered plan, a group must for as long as it takes the position that it is a grandfathered plan maintain records documenting the terms of the plan in connection with the coverage in effect on March 23, 2010 and any other documentation necessary to verify or explain its status as a grandfathered plan.
- The plan must make its records available for examination upon request.

Permissible Changes

- Changes effective after March 23, 2010 pursuant to a legally binding contract entered into before March 23, 2010.
- Changes pursuant to a filing on or before March 23, 2010 with a state insurance department.
- Changes pursuant to a plan amendment adopted prior to March 23, 2010.
- Changes adopted on or after March 23, 2010, but before June 14, 2010 if the changes are reversed or modified by the first day of the first plan year on or after September 23, 2010.

Informational Resources

- The regulations -

<http://edocket.access.gpo.gov/2010/pdf/2010-14488.pdf>

- HHS Fact Sheet –

http://www.healthreform.gov/newsroom/keeping_the_health_plan_you_have.html

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QUESTIONS ?