

The Patient Protection and Affordable Care Act (PPACA) and “Grandfathered” Health Plans

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Background

PPACA instituted several new insurance market reforms and benefit mandates for group health plans. Many of these new mandates go into effect with the first plan year beginning after September 23, 2010. PPACA also allowed for “grandfathered” plans to be exempt from certain insurance market reforms. A group health plan is considered “grandfathered” if it was in effect on March 23, 2010, the date of enactment of The Patient Protection and Affordable Care Act.

Grandfathered Health Plans will be able to make routine changes to their policies and maintain their Grandfathered status according to guidance released Monday June 14, 2010. The Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan under the Patient Protection and Affordable Care Act states that routine changes 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 Federal laws. Plans will lose their grandfathered status if they choose to make significant changes that reduce benefits or increase costs to plan participants.

Changes that would cancel the grandfathered status of a health plan are:

- Significantly cut or reduce benefits – no longer covering healthcare services for a major diagnosis category such as diabetes, cystic fibrosis, HIV/AIDS;
- Raise coinsurance charges – coinsurance levels cannot be increased;

- Significantly raise copayment levels – increasing copayment levels by 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 between 2010 and 2012, it will lose its grandfathered status;
- Significantly raise deductibles – increasing deductibles by more than the medical inflation percentage plus 15 percentage points. For example, if a plan raises the deductible from \$500 to \$750, it will lose its grandfathered status;
- Significantly lower employer contributions – decreasing the percentage of employer cost sharing by greater than 5 percentage points. For example, if a plan decreases the employer cost-sharing percentage and increases employee cost-sharing percentages from 10% to 20%, it will lose its grandfather status;
- Add or tighten annual limits on what the insurer pays – capping or decreasing the annual dollar amount covered by a plan for specific services or adding an annual dollar limit maximum where one did not exist on March 23, 2010.

*******Final Regulation Update*******

When the interim regulations were released, it was determined that plans lost their grandfathered status if they changed insurance companies – purchasing insurance from an insurance company other than the insurance company providing the insurance on March 23, 2010. However, final regulations released on November 15th, 2010 declared that plans could actually switch insurance carriers and remain grandfathered – but only for plan effective dates on or after November 15th. This means

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that plans that changed their insurance carrier between March 23 and November 15, 2010 will have officially lost their grandfathered status. Plans changing their insurance carrier on or after November 15, 2010 still have the ability to stay grandfathered.

Grandfathering and PPACA:

The benefits of maintaining a plans' grandfathered status are that some of the coverage requirements under the Affordable Care Act do not apply to grandfathered plans. For example, grandfathered plans are exempt from:

- Offering preventive benefits without deductibles and copayments;
- Including coverage for treatment that is part of a clinical trial;
- Nondiscrimination rules prohibiting discrimination in favor of highly compensated employees;
- Maintaining claims and appeals processes that include external review;
- Offering dependent coverage to adult children who are eligible for other employer sponsored coverage through 2014.

All health plans – whether or not they are grandfathered plans – must provide certain benefits for plan years starting on or after September 23, 2010 including:

- No lifetime limits on coverage for all plans;
- No rescissions of coverage when people get sick and have previously made an unintentional mistake on their application;
- Extension of parents' coverage to young adults under 26 years old;
- No coverage exclusions for children with pre-existing conditions; and
- No "restricted" annual limits (e.g., annual dollar-amount limits on coverage below standards to be set in future regulations).

Special Note for Collectively Bargained Plans

The Interim Final Rule also clarifies the grandfathered status of collectively bargained plans:

- Insured health plan coverage maintained pursuant to one or more collective bargaining agreements ratified before March 23, 2010 is considered a grandfathered plan until the date on which the last agreement relating to the coverage in effect on March 23, 2010 is terminated.
- There is NO special grandfathering rule for self-funded collectively bargained plans. These plans are subject to the same grandfathering rules as other non-collectively bargained plans.
- It was also clarified that grandfathered collectively bargained plans are subject to the same effective dates for health care reform requirements as other grandfathered plans, meaning there is no delayed effective date for market reforms that are required regardless of grandfathered status.

Employers and Plan Sponsors will need to consider the pros and cons of maintaining their grandfathered status as real world economic forces play out at their next renewal. The financial implications of maintaining a plan's grandfathered status may not prove worthwhile in the face of double digit premium increases.

U.S. Department of Health & Human Services Resource Links:

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

<http://www.hhs.gov/news/press/2010pres/06/20100614e.html>

For more information on healthcare reform and guidance on grandfathered plans, please contact hwcompliance@conradsiegel.com

