

Legislative Brief

Health Care Reform: Regulations Issued on Grandfathered Plans



EXECUTIVE SUMMARY

The health care reform law passed earlier this year brings many changes to employers and health plans. The extent of the impact will depend, in part, on whether you maintained a health care plan on March 23, 2010, the date the primary legislation was enacted. If your company sponsored a plan on that date, it is considered a "grandfathered" plan. Grandfathered plans are exempt from certain health care reform requirements, such as no cost-sharing for preventive care and other patient protections.

On June 14, 2010, the Departments of Health and Human Services (HHS), Labor and Treasury issued regulations regarding grandfathered plans. Importantly, it clarifies what types of changes can be made to existing plans that will allow them to retain their "grandfathered" status.

This Seubert & Associates Legislative Brief summarizes the new regulations as follows.

SUMMARY OF THE REGULATIONS

The regulations essentially state that plans will lose their grandfathered status if they choose to significantly cut benefits or increase out-of-pocket spending for consumers. Losing grandfathered status means that a plan would have to comply with additional health care reform requirements, such as first-dollar coverage of recommended prevention services, new non-discrimination provisions, and patient protections such as guaranteed access to OB-GYNs and pediatricians.

Permitted Changes

Grandfathered health plans will be able to make routine changes to their policies and maintain their status. These 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 other federal laws. Premium changes are not taken into account when determining whether or not a plan is grandfathered.

Prohibited Changes

Plans will lose their grandfathered status if they choose to make significant changes that reduce benefits or increase costs to consumers. Specifically, making the following changes would cause a plan to lose its grandfathered status:

- **Significantly Cutting or Reducing Benefits.** For example, if a plan decides to no longer cover care for people with diabetes, cystic fibrosis or HIV/AIDS.
- **Raising Co-Insurance Charges.** Typically, co-insurance requires a patient to pay a fixed percentage of a charge (for example, 20 percent of a hospital bill). Grandfathered plans cannot increase this percentage.
- **Significantly Raising Co-Payment Charges.** Frequently, plans require patients to pay a fixed-dollar amount for doctor's office visits and other services. Compared with the copayments in effect on March 23, 2010, grandfathered plans will be able to increase those co-pays by no 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 over the next two years, it will lose its grandfathered status.

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- ***Significantly Raising Deductibles.*** Many plans require patients to pay the first bills they receive each year (for example, the first \$500, \$1,000 or \$1,500 a year). Compared with the deductible required as of March 23, 2010, grandfathered plans can only increase these deductibles by a percentage equal to medical inflation plus 15 percentage points. In recent years, medical costs have risen an average of 4-5 percent so this formula would allow deductibles to go up, for example, by 19-20 percent between 2010 and 2011, or by 23-25 percent between 2010 and 2012. For a family with a \$1,000 annual deductible, this would mean if they had a hike of \$190 or \$200 from 2010 to 2011, their plan could then increase the deductible again by another \$50 the following year.
- ***Significantly Reducing Employer Contributions.*** Many employers pay a portion of their employees' premium for insurance and this is usually deducted from their paychecks. Grandfathered plans cannot decrease the percent of premiums the employer pays by more than 5 percentage points (for example, decrease their own share and increase the workers' share of premium from 15% to 25%).
- ***Adding or Tightening an Annual Limit on What the Insurer Pays.*** Some insurers cap the amount that they will pay for covered services each year. If they want to retain their status as grandfathered plans, plans cannot tighten any annual dollar limit in place as of March 23, 2010. Moreover, plans that do not have an annual dollar limit cannot add a new one unless they are replacing a lifetime dollar limit with an annual dollar limit that is at least as high as the lifetime limit (which is more protective of high-cost enrollees).
- ***Cannot Change Insurance Companies.*** If an employer decides to buy insurance for its workers from a different insurance company, this new insurer will not be considered a grandfathered plan. This does not apply when employers that provide their own insurance to their workers switch plan administrators or to collective bargaining agreements.

Additional Requirements for Grandfathered Plans

The regulations also contain additional requirements to keep health plans from using the grandfather rule to avoid providing important consumer protections.

To promote transparency, the regulations require a plan to disclose to consumers, every time it distributes materials, whether the plan believes that it is a grandfathered plan and therefore is not subject to some of the additional consumer protections of the health care reform law. This allows consumers to understand the benefits of staying in a grandfathered plan or switching to a new plan. The plan must also provide contact information for enrollees to have their questions and complaints addressed.

The regulations also provide that a plan's grandfathered status may be revoked if it forces consumers to switch to another grandfathered plan that, compared to the current plan, has less benefits or higher cost sharing as a means of avoiding new consumer protections. Grandfathered status may also be revoked if a plan is bought by or merges with another plan simply to avoid complying with the law.

Special Types of Health Plans

Fully-insured health plans subject to collective bargaining agreements will be able to maintain their grandfathered status until their agreement terminates. After that point, they are subject to the same rules as other health plans; in other words, they will lose their grandfathered status if they make any of the substantial changes described above. Retiree-only and "excepted health plans" such as dental plans, long-term care insurance, or Medigap, are exempt from the health care reform insurance reforms.

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New Disclosure and Recordkeeping Requirements

Plans must disclose their Grandfathered Status in any plan materials provided to participants or beneficiaries and must provide contact information for about their Grandfathered Status.

The federal government has provided a [model notice](#) to assist plan administrators with complying with this disclosure obligation.

Grandfathered plans will also have record keeping obligations to verify Grandfathered Status, e.g., records documenting the plan terms in effect on March 23rd, 2010, and must make records available to participants or regulators.

IMPACT OF GRANDFATHERING REGULATIONS

Seubert & Associates will continue to work closely with our clients on how grandfathering could potentially impact their medical plan renewal decisions. As Seubert & Associates begins to work on your next medical plan renewal, please know that the new health care reform regulations will be evaluated on their impact to your specific plan. If you should have any questions, please contact your Seubert & Associates account manager.

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