



CLIENT BULLETIN

Regulations On "Grandfathered" Status Posted Collectively Bargained Plans DO NOT Have Delayed Effective Date for Complying With Health Care Reform Law

The Departments of Labor (DOL), Health and Human Services (HHS) and Treasury (IRS) jointly posted pre-publication copy of ***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***. We will refer to the health reform laws collectively as "*The Affordable Care Act*." These regulations are scheduled to be published in the *Federal Register* on June 17, 2010. The pre-publication version is available by "[clicking here](#)" or at: http://www.federalregister.gov/OFRUpload/OFRData/2010-14488_PI.pdf. A copy of just the ERISA set of regulations with a Table of Contents added is available by "[clicking here](#)."

In addition to the regulations, there was a set of 19 Questions and Answers (Q&As) issued at: <http://www.healthreform.gov/about/grandfathering.html>. A specially prepared version with a Table of Contents added is available by "[clicking here](#)."

Grandfathered Status and Collectively Bargained Plans – NO DELAY

Before discussing the regulation, we will note the *Preamble* and regulations answer several questions pertaining to collectively bargained plans and the "grandfather rule." A "grandfathered" health plans is one that existed on March 23, 2010, when *The Affordable Care Act* became a law. Grandfathered plans are exempt from some of the new law's provisions.

Collectively bargained plans existing on March 23, 2010 must comply with *The Affordable Care Act* provisions applicable to non-collectively bargained grandfathered plans by the first Plan Year on or after September 23, 2010.

For calendar year plans, that is January 1, 2011.

The regulations clarify:

- collectively bargained plans (both insured and self-insured) that are grandfathered health plans DO NOT have a *delayed effective date* for compliance with the *Affordable Care Act* provisions applicable to other non-collectively bargained grandfathered plans.
- A plan with health insurance coverage maintained pursuant to one or more collective bargaining agreements ratified before March 23, 2010 is a grandfathered health plan, at least until the date on which the last agreement relating to the coverage that was in effect on March 23, 2010 terminates. This rule only applies to insured plans, not self-insured plans.
- Self-insured plans in existence before March 23, 2010 must abide by the rules applicable to non-collectively bargained plans to maintain grandfathered status.

Reforms Applicable to Collectively Bargained Plans

The requirements of *The Affordable Care Act* that are applicable to “grandfathered” plans, including collectively bargained plans, as of the first Plan Year on or after September 23, 2010 are:

- No lifetime limits on coverage;
- No “restricted” annual limits;
- No rescissions of coverage unless for fraud;
- Extension of parents’ coverage to young adults under 26 years old;
- No coverage exclusions for children with pre-existing conditions;
- Prohibition on excessive waiting periods;
- Development and utilization of uniform explanation of coverage documents and standardized definitions; and
- Bringing down cost of health care coverage (for insured plans).

What Changes Can a Plan Make and Retain Grandfathered Status?

According to the *Fact Sheet* summarizing the regulations, 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;
- new benefit additions;
- modest adjustments to existing benefits;
- voluntarily adopting new consumer protections under the new law; or
- changes to comply with State or other Federal laws.

For insured plans, premium changes are not taken into account when determining whether or not a plan is grandfathered.

What Changes Will Cause a Plan to Lose Grandfathered Status?

Plans will lose their grandfathered status if they choose to make significant changes that reduce benefits or increase costs to participants, as shown below in an excerpt from the *Fact Sheet*, modified where appropriate to reflect the special circumstances of multiemployer collectively bargained plans.

Compared to their plan in effect on March 23, 2010, grandfathered plans:

- **Cannot Significantly Cut or Reduce Benefits.** For example, if a plan decides to no longer cover care for people with diabetes, cystic fibrosis or HIV/AIDS. [NOTE: This means plans with substance abuse benefits that planned on cutting these benefits as a means of complying with the new mental health parity laws would lose “grandfathered” status if they do so. Fortunately, plans that have dropped substance abuse and/or mental health benefits (or made other relevant benefit cuts) after March 23, 2010 have until the first day of the first plan year beginning on or after September 23, 2010 to undo such changes and bring the terms of the plan within the limits for retaining grandfather status.]
- **Cannot Raise Co-Insurance Charges.** Typically, co-insurance requires a patient to pay a fixed percentage of a charge (for example, 20% of a hospital bill). Grandfathered plans cannot increase this percentage.
- **Cannot Significantly Raise 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 2 years, it will lose its grandfathered status.
- **Cannot Significantly Raise 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 to 5% so this formula would allow deductibles to go up, for example, by 19-20% between 2010 and 2011, or by 23-25% 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.

- ***Cannot Significantly Lower Employer Contributions.*** Grandfathered plans cannot decrease the percent of contributions the employer pays by more than 5%.
- ***Cannot Add or Tighten an Annual Limit on What the Insurer Pays.*** 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 insured plan decides to buy insurance from a different insurance company, this new insurer will not be considered a grandfathered plan. This rule does not apply to switching plan administrators or to collective bargaining agreements.

What If a Plan Loses its Grandfather Status?

If a plan loses its grandfathered status, then the plan coverage must include:

- Coverage of recommended prevention services with no cost sharing; and
- Patient protections such as guaranteed access to OB-GYNs and pediatricians.

In addition, the plan will also be subject to other reform provisions such as:

- Appeals process for appeals of coverage determinations and claims (includes internal appeals and external review);
- Coverage of emergency services without prior authorization and at same cost sharing as in-network; and
- Insured group health plans must meet the nondiscrimination rules of Code 105

What Must a Plan Do to Maintain Grandfathered Status?

To maintain status as a grandfathered health plan, a plan or health insurance coverage:

- must include a statement, in any plan materials provided to participants or beneficiaries describing the benefits provided under the plan or health insurance coverage, that the plan or health insurance coverage believes that it is a grandfathered health plan within the meaning of section 1251 of the Affordable Care Act and
- must provide contact information for questions and complaints.
- must maintain records documenting the terms of the plan or health insurance coverage that were in effect on March 23, 2010, and any other documents necessary to verify, explain, or clarify its status as a grandfathered health plan. Such documents could include intervening and current plan documents, health insurance policies, certificates or contracts of insurance, summary

plan descriptions, documentation of premiums or the cost of coverage, and documentation of required employee contribution rates.

- must make such records available for examination. Accordingly, a participant, beneficiary, Federal agency official would be able to inspect such documents to verify the status of the plan or health insurance coverage as a grandfathered health plan. The plan must maintain such records and make them available for examination for as long as the plan takes the position that the plan or health insurance coverage is a grandfathered health plan.

Model language is provided in the regulations that can be used to satisfy this disclosure requirement of "grandfathered status" under the first bullet point above and it available by "[clicking here](#)."

Conclusion

With the effective date of *The Affordable Care Act* to collectively bargained plans clarified, the plan's Trustees, in conjunction with their plan professionals, will need to amend the plan to be compliant with the required changes by the first Plan Year on or after September 23, 2010.

Plan Trustees will also want to determine if their plan is a grandfathered plan and take appropriate steps to maintain that status if desired. Trustees may also want to consider the cost implications if they lose grandfathered status.

Plan professionals will want to read one set of the entire regulation. The regulation contains numerous helpful examples. Additional insight on the reasoning behind the regulations as well as other valuable insights are found in the regulation's *Preamble*.

For more information on the *Affordable Care Act*, see prior Research Department Publications.

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