



Understanding Health Care Reform

Employee Benefits *ALERT*

Agencies Clarify Grandfathered Health Plan Status

Certain health plans in existence on March 23, 2010, are exempt from a number of the requirements under the Patient Protection and Affordable Care Act (the Affordable Care Act). Such exempted plans are called “grandfathered health plans.” Interim final regulations explaining how a grandfathered health plan can retain or lose its grandfathered status were issued by the Internal Revenue Service, the Employee Benefits Security Administration and the Department of Health and Human Services on June 17, 2010.

HOW WOULD A PLAN LOSE ITS GRANDFATHERED STATUS?

Reduction in the Scope of Benefits: If a group health plan eliminates all or substantially all benefits covering the diagnosis or treatment of a particular condition, it will lose its grandfathered status. For example, a group health plan that provided coverage for cystic fibrosis treatment on March 23, 2010 would lose grandfathered status if it eliminated all cystic fibrosis benefits.

Coinsurance Increase: Any increase in the coinsurance percentage after March 23, 2010 will cause a group health plan to lose grandfathered status.

Increase in Fixed-Amount Cost-Sharing Requirements (other than copayments): Any increase in fixed-amount cost-sharing requirements from March 23, 2010 (e.g., increasing deductibles or out-of-pocket limits), that is greater than a maximum percentage based on inflation will cause a group health plan to lose its grandfathered status.

Copayments: A group health plan will lose its grandfathered status if it increases copayments by an amount that exceeds the greater of (i) a maximum percentage based on inflation; or (ii) \$5, increased by inflation.

Decreases in Employer Contributions: If a plan sponsor’s contribution rate is based on the cost of coverage, a group health plan ceases to be a grandfathered plan if the plan sponsor decreases its contribution rate towards the cost of any tier of coverage for any class of similarly situated individuals more than 5 percent below the contribution rate on March 23, 2010.

New or Lowered Annual Limits: A group health plan will lose its grandfathered status if it imposes a new overall annual limit or lowers annual limits.

New Insurance Contract: If a plan sponsor enters into a new insurance contract after March 23, 2010 (i.e., the plan sponsor does not renew the previous insurance policy), then that new insurance contract is not a grandfathered health plan. Insurance contracts sold to new entities after March 23, 2010 will not be grandfathered health plans, even if the health insurance products provided in the contract were offered in the group market before March 23, 2010.

Anti-Abuse: A plan will lose its grandfathered status if the plan sponsor enters into a merger or acquisition with the principal purpose of covering new individuals under its grandfathered health plan. Also, the limits on changes to a grandfathered plan may not be circumvented by transferring employees from coverage under one grandfathered plan to coverage under another grandfathered plan. If this occurs, both plans will lose their grandfathered status.

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WHAT CHANGES WILL NOT AFFECT GRANDFATHERED STATUS?

The following modifications to a group health plan will not affect its grandfathered status:

- Change in premiums;
- Changes to comply with federal or state legal requirements;
- Changes to comply with the Affordable Care Act; or
- Changing third-party administrators.

WHAT MUST A PLAN DO TO MAINTAIN ITS GRANDFATHERED STATUS?

Disclosure: A group health plan must include a statement in the plan materials distributed to participants and beneficiaries describing the benefits provided under the plan, stating that the plan sponsor believes that the plan is grandfathered within the meaning of the Affordable Care Act and listing contact information for questions and complaints.

Plan Records: A plan sponsor must maintain health plan records documenting the terms of the plan 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. These documents could include intervening and current plan documents, health insurance policies, summary plan descriptions, documentation of premiums or the cost of coverage and documentation of required employee contributions. These records must be available for examination by a participant, beneficiary or federal or state official. The records should be maintained for as long as a plan sponsor takes the position that the plan is grandfathered.

WHAT ABOUT GROUP HEALTH PLANS THAT HAVE ALREADY MADE CHANGES?

Changes to a group health plan will not be taken into account for purposes of determining grandfathered status if (i) the changes were made pursuant to a legally binding contract entered into prior to March 23, 2010; (ii) the changes were made to the terms of health insurance coverage pursuant to a filing with a state insurance department prior to March 23, 2010; or (iii) the changes were made pursuant to written plan amendments adopted prior to March 23, 2010.

In addition, employers may revoke or modify changes adopted prior to June 17, 2010, if the changes might cause a plan to cease to be a grandfathered plan. Grandfathered status will be preserved if the changes are revoked, and the plan is modified, effective as of the first day of the first plan year beginning on or after September 23, 2010, to bring the terms within the limits for retaining grandfathered plan status.

WHY IS GRANDFATHERED STATUS IMPORTANT?

Grandfathered plans will be exempt from the following the Affordable Care Act requirements:

Nondiscrimination rules that prohibit sponsors of *insured* group health plans from establishing plan eligibility rules for any full-time employees that are based on total hourly or annual salary or otherwise discriminate in favor of higher wage employees. *Note: Self-insured plans are already subject to nondiscrimination rules under Code Section 105(h).*

Preventive care without cost sharing provisions that require group health plans and health insurers to provide coverage for preventive services without imposing cost sharing requirements.

Claims appeals process that requires group health plans and health insurers to improve the claims appeals process by implementing both internal and external claims review processes.

Provider selection rules that allow participants in group health plans to choose their primary care physicians from any available primary care physicians; do not require increased cost or prior authorization for out-of-network emergency care; do not require referrals or prior authorizations for the OB-GYN that a participant chooses.

HOW ARE COLLECTIVELY BARGAINED HEALTH PLANS AFFECTED BY THE GRANDFATHER RULES?

For health insurance coverage (not self-insured plans) maintained pursuant to a collective bargaining agreement ratified before March 23, 2010, the coverage is grandfathered coverage at least until the collective bargaining agreement in effect on March 23, 2010 terminates. This is the case even if there was a change in health insurance issuers during that time period. After the collective bargaining agreement terminates, a determination of the grandfathered status is made by comparing the terms of the coverage on the date of determination with the terms of the coverage in effect on March 23, 2010.

WHAT SHOULD PLAN SPONSORS DO NOW?

Plan sponsors need to consider whether the changes made since March 23, 2010, or proposed plan amendments, will cause their plans to lose grandfathered status. The cost savings of increasing coinsurance, changing insurance carriers or limiting benefits may outweigh the benefit of maintaining grandfathered status. Many of the health care reform requirements apply to grandfathered plans. The burden of complying with provisions applicable only to plans that are not grandfathered may be acceptable to plan sponsors looking to reduce health plan costs.

Contact any member of the Williams Mullen Employee Benefits Group if you have any questions regarding the grandfathered health plan rules or the Affordable Care Act. This information is provided as an educational service and is not meant to be and should not be construed as legal advice. Readers with particular needs on specific issues should retain the services of competent counsel.

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