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Interim Final Regulations Address Grandfathered Plans Under the Health Care Act

A key concept of the health care reform law passed in 2010 is the “grandfathered plan.” A grandfathered plan is wholly exempt from several of the health care reform provisions, and enjoys the benefit of a delayed effective date with respect to others. However, the health care reform legislation passed by Congress contained only a bare definition of “grandfathered plan” as “a plan that was in existence on March 23, 2010.” Further guidance with respect to what a grandfathered plan is and how a grandfathered plan could lose its status was left to the administrative agencies.

Just last week, on June 14, 2010, the Departments of Health and Human Services, Treasury, and Labor collectively issued interim final regulations defining what constitutes a “grandfathered plan” under the Patient Protection and Affordable Care Act (as amended by the Health Care and Education Reconciliation Act of 2010) (together, the “Act”).

The grandfathered plan designation under the Act is potentially significant. For example, grandfathered plans:

- Are not required to cover preventive services without cost-sharing;
- Have until 2014 before they are required to offer coverage to adult children up to age 26, provided group coverage for such individuals is otherwise available; and
- Are exempt from the requirement to submit annual “Quality of Care” reports to the Department of Health and Human Services.

Although the Act distinguishes between grandfathered and non-grandfathered plans, it fails to specify exactly how a plan might lose its grandfathered status. The regulations make it clear that a grandfathered plan will retain that classification until it loses its status through some significant change in the terms of the coverage it provides, and detail which actions will affect a plan’s grandfathered status.

Actions That Will Affect a Plan’s Grandfathered Status

Many common changes in plan design will terminate a plan’s grandfathered status. Generally, such changes include those that reduce covered benefits or increase participant cost-sharing. Specifically, the regulations provide that such changes include:

- Entering into a new policy, certificate or insurance contract with the plan’s insurance issuer;
- Eliminating all or substantially all of any benefit necessary to diagnose or treat a particular condition;
- Increasing the coinsurance percentages;
- Increasing the deductible, out-of-pocket limit, or other fixed dollar cost-sharing requirement or limit other than a copayment by more than the increase in the medical component of the consumer price index since March 2010 plus a total of 15 percentage points;
- Increasing a copayment in excess of the greater of medical inflation plus \$5.00 or medical inflation plus a total of 15 percentage points;

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- Decreasing the employer-paid portion of coverage, whether based on the cost of coverage or on a formula, by more than 5 percentage points below the contribution rate in place on March 23, 2010; and
- Reducing the dollar value of existing annual benefit limits or imposing a new annual dollar limit on coverage.

As several of these cost factors are built into a typical plan's routine year-over-year operation, it appears that plans may be likely to lose grandfathered status over time unless plan sponsors make a deliberate decision to retain such status.

Actions That Do Not Affect a Plan's Grandfathered Status

A self-insured plan may change its plan administrator without losing its grandfathered status. Routine changes to benefits offered – such as the addition of new benefits or modest adjustments to existing benefits – also will not jeopardize the grandfathered status of a plan. Premium adjustments reflecting the inflation of medical costs have no impact on a plan's status. Additionally, a grandfathered plan may add new members without losing its status, although an employer may not transfer employees from one grandfathered plan to another if amending the terms of the original plan to those of the transferee plan would result in the loss of grandfathered status.

Special Rules for Collectively-Bargained Plans

Insured collectively-bargained plans will retain their grandfathered status until the expiration of the last of the collective bargaining agreements governing the grandfathered coverage. Moreover, changing the insurance issuer during the period of a collective bargaining agreement will *not* cause the health plan to lose grandfathered status. In contrast, self-insured collectively-bargained plans are subject to the general grandfathered plan rules and must satisfy the requirements as noted above or lose their grandfathered status.

Disclosure and Record-Keeping Requirements

Sponsors of grandfathered plans must disclose to eligible participants in the summary plan description, enrollment guide, and other plan materials that they are grandfathered and are therefore not required to comply with certain requirements of the Act. The new regulations include model language to satisfy this disclosure requirement.

Plan sponsors must retain and make available for inspection records documenting the terms of any plan or insurance coverage in effect on March 23, 2010, in order to verify grandfathered status.

If you have any questions about these interim final rules or any other employee benefit matters, please contact a member of our [Benefits Law Group](#).



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