

New Regulations Emerge Regarding Grandfathering Plans

Under the recently enacted federal health care reform legislation, health plans can be grandfathered. Interim Final Regulations have been published to provide further clarification on grandfathering. These rules are designed, according to the Obama administration, to allow grandfathered plans to “innovate and contain costs by allowing insurers and employers to make routine changes without losing grandfather status.” In general, grandfather status will be lost if there are significant reductions to benefits or increases in out-of-pocket spending for consumers, such as deductibles or co-pays.

Additionally, in limited situations, the legislation allows clients that made benefit changes after March 23, 2010, that would not meet the grandfathering rules to regain grandfathered status at the next renewal in 2011.

What is grandfathering?

Grandfathering allows groups and individual members that keep their existing plan from March 23, 2010, to January 1, 2014, to be exempt from the new product and rating framework that is effective in 2014. To maintain grandfathered status, a client must continue to keep the plan and the plan’s benefits essentially the same. Grandfathering also exempts plans from some of the requirements of the plan-related provisions effective September 23, 2010.

The following changes can be made **without** impacting grandfathered status:

- Changes in premiums of a policy or plan
- Changes required to comply with federal or state law
- Changes to increase benefits, or voluntarily comply with provisions of the Patient Protection and Affordable Care Act
- Changes to plan structure, for example, switching from a health reimbursement arrangement to major medical coverage, or from insured to self-funded coverage
- Changes to a provider network
- Changes to a prescription drug formulary
- Changes to accommodate mergers and acquisitions (as long as the merger or acquisition is not done solely to allow a group to move from one grandfathered plan to another when the plan change would reduce benefits or increase cost sharing in excess of that allowed by the regulations)
- Changes to an ASO plan's third-party administrator

The following changes would **cause a loss** of grandfathered status:

- Eliminate all (or substantially all) benefits to diagnose or treat a particular condition.
- Increase coinsurance (or another percentage cost-sharing requirement) above the level at which it was set on March 23, 2010. In other words, any increase in an insurer or plan's coinsurance will result in a loss of grandfathered status.
- Increase fixed-amount cost-sharing requirements other than copayments, such as a deductible or an out-of-pocket limit, by a total percentage (measured from March 23, 2010) that is more than the sum of medical inflation plus 15%.

- Increase copayments above the level in effect on March 23, 2010, by an amount that exceeds the greater of (a) the sum of medical inflation plus 15%, or (B) \$5 increased by medical inflation.
- Reduce employer contributions (calculated by cost or formula, such as hours worked) toward any tier of group health insurance coverage or a group health plan by more than 5% below the contribution rate on March 23, 2010.
- Impose an annual limit on the dollar value of benefits if an annual or lifetime limit had not been previously imposed on all benefits or, for plans that previously imposed a lifetime limit of all benefits, impose an overall annual dollar limit that is lower than the lifetime limit, or, for plans that previously imposed an annual limit on all benefits, decreases the dollar value of the annual limit.
- Issuer or plan sponsor does not disclose to participants and beneficiaries that the plan or coverage is a grandfathered health plan.
- Change from one insurer to another