

Interim Final Rule on Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan under the Patient Protection and Affordable Care Act

Background

On March 23, 2010, President Obama signed the Patient Protection and Affordable Care Act (PPACA); a week later, he signed the Health Care and Education Reconciliation Act of 2010 (HCERA), which amended some portions of the PPACA. With that, the most comprehensive reform of the American health-care system in many years became law. This law will have a significant impact on employer-sponsored health care, but it provided a carve-out for what it called “grandfathered health plans.” Grandfathered health plans will be exempt from portions of the health-care reform law until 2014, whereas plans without this status will be required to comply with the PPACA rules within a shorter timeframe.

On June 17, 2010, the Departments of Labor, Treasury, and Health and Human Services issued an Interim Final Rule outlining the criteria defining a grandfathered plan and what would cause a plan to lose its grandfathered status. These are outlined below.

Provisions

Update: On Nov. 17, 2010, the Department of Labor issued an amendment to these interim final regulations that allows all group health plans to change insurers without triggering the loss of grandfathered status as long as:

- The operative date of coverage is after Nov. 15, 2010 (For example, if a plan enters into an agreement with an issuer on Sept. 28, 2010, for a new policy to be effective on Jan. 1, 2011, then Jan. 1, 2011, is the date the new policy is effective.);
- No other changes described below accompany the change of insurers; and
- A group health plan that enters into a new policy, certificate or contract of insurance provides to the new health insurance issuer (and the new health insurance issuer must require) documentation of plan terms (including benefits, cost sharing, employer contributions and annual limits) under the prior health coverage sufficient to determine whether any change described below is being made.

What is a Grandfathered Plan?

- A “grandfathered plan” is a plan providing coverage from a group health plan, or health insurance issuer, in which an individual was enrolled on March 23, 2010. (Even if individuals who enrolled prior to March 23, 2010, leave the health plan, the plan does not automatically lose grandfathered status as long as the plan has consistently provided coverage to someone since March 23, 2010.)

Additional Rules for Grandfathered Plans

- Grandfathered health-plan coverage includes coverage of family members who enroll after March 23, 2010, in the grandfathered health-plan coverage of the individual. Coverage is also considered grandfathered for new employees (newly hired or newly enrolled) and their families enrolling in the plan after March 23, 2010.
- Grandfathered plans must disclose their status as a “grandfathered health plan within the meaning of section 1251 of the Patient Protection and Affordable Care Act” along with contact information for questions.
 - The [Interim Final Rule](#) provides model language for this disclosure.
- Grandfathered plans must also maintain records documenting the terms of the plan or health insurance coverage in connection with the coverage in effect on March 23, 2010, and any other documentation necessary to verify, explain, or clarify its status as a grandfathered health plan. In addition, the health plan must make these records available for examination upon request.

Applicability of Certain Provisions in the Patient Protection and Affordable Care Act to Grandfathered Plans

Public Health Service Act statutory provisions	Applicable to grandfathered health plans
§ 2704 Prohibition of preexisting condition exclusion or other discrimination based on health status.	Applicable to grandfathered group health plans and group health insurance. Not applicable to grandfathered individual health insurance coverage.
§ 2708 Prohibition on excessive waiting periods for coverage.	Applicable to grandfathered health plans.
§ 2711 No lifetime or annual limits.	Lifetime limits: Applicable to grandfathered health plans. Annual limits: Applicable to grandfathered group health plans and group health insurance coverage after 2014. Prior to 2014, grandfathered group health plans are allowed to have “restricted annual limits” as defined in forthcoming regulations; not applicable to grandfathered individual health insurance coverage.
§ 2712 Prohibition on rescissions.	Applicable to grandfathered health plans.
§ 2714 Extension of dependent coverage until age 26.	Applicable to grandfathered health plans.
§ 2715 Development and utilization of uniform explanation of coverage documents and standardized definitions.	Applicable to grandfathered health plans.
§ 2718 Bringing down cost of health-care coverage (for insured coverage).	Applicable to insured grandfathered health plans.

Losing Grandfathered Plan Status

If any of the events below occur, grandfathered status is lost and the plans are subject to all provisions that non-grandfathered plans must comply with.

- Conduct a merger, acquisition or similar business restructuring for the sole purpose of covering new individuals under a grandfathered health plan;
- Transfer employees from one plan to another for no bona fide employment-based reason;
- Eliminate benefits related to the diagnosis or treatment of a particular condition;
- Increase the percentage of a cost-sharing requirement more than the level on March 23, 2010;
- Increase the fixed amount of cost-sharing by more than the sum of medical inflation plus 15 percentage points more than the total percentage measured on March 23, 2010;
- Increase co-payments as a total percentage measured on March 23, 2010 more than the sum of medical inflation plus 15 percentage points OR medical inflation plus \$5;
- Decrease the employer’s share of the premium more than 5 percentage points below the level on March 23, 2010; and
- Tighten any annual dollar limit in place as of March 23, 2010, or, if no annual limit in place on March 23, 2010, add an annual dollar limit unless provider is replacing a lifetime dollar limit with an annual dollar limit that is at least as high as the lifetime limit.

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