

Alert 10-146



New Guidance on Grandfathered Health Plans

On June 14, 2010, the Department of Health & Human Services, in conjunction with the Department of Labor and the Treasury Department, issued interim final regulations relating to retaining status as a grandfathered health plan ("Grandfathered Plan")* under the Patient Protection and Affordable Care Act of 2011, and the Health Care and Education Reconciliation Act of 2010 (collectively, the "Health Care Reform Act"). Grandfathered Plans are exempt from a number of the new insurance reforms under the Health Care Reform Act, but are required to comply with a subset of the Health Care Reform Act's provisions ensuring access to coverage with certain protections. See our [April 15, 2010 Benefits Alert](#) for a discussion of the applicable grandfathering provisions. These interim final regulations attempt to clarify some of the issues remaining regarding a plan's status as grandfathered under the regulations.

Definition of Grandfathered Plan

A group health plan that has continuously covered someone since March 23, 2010 (not necessarily the same person, but at all times at least one person), is considered a Grandfathered Plan. This coverage includes that of new employees and family members who enroll after March 23, 2010 (subject to corporate acquisition anti-abuse rules), and such plan does not cease to be a Grandfathered Plan merely because one or more (or even all) individuals enrolled on March 23, 2010 cease to be covered.

Preserving Grandfathered Plan Status

The Health Care Reform Act is silent as to whether certain changes to a plan or coverage would make it lose its Grandfathered Plan status. The regulations provide that a group health plan will no longer be considered a Grandfathered Plan if the plan is amended:

- To eliminate all or substantially all benefits to diagnose or treat a particular condition. The elimination of benefits for any necessary element to diagnose or treat a condition is considered the elimination of all or substantially all benefits to diagnose or treat a particular condition.
- To increase the plan's cost-sharing requirement (such as co-insurance), determined on a percentage basis, above the level at which it was on March 23, 2010
- To increase the fixed-amount cost-sharing requirements other than co-payments (e.g., a \$500 deductible or a \$2,500 out-of-pocket limit) by a total percentage, measured from March 23, 2010, that is more than the sum of medical inflation plus 15 percent
- To increase co-payments by an amount that exceeds the greater of: (i) a total percentage measured from March 23, 2010, that is the sum of medical inflation plus 15 percent or (ii) \$5 increased by medical inflation measured from March 23, 2010
- When an employer or employee organization decreases its contribution rate by more than 5 percent below the contribution rate on March 23, 2010, or
- With respect to annual limits, when a group health plan that on March 23, 2010: (i) did not impose an overall annual or lifetime limit on the dollar value of all benefits, imposes an overall annual limit on the dollar value of benefits; (ii) imposed an overall lifetime limit on the dollar value of all benefits but no overall annual limit on the dollar value of all benefits, adopts an overall annual limit at a dollar value that is lower than the dollar value of the

lifetime limit on March 23, 2010; or (iii) imposed an overall annual limit on the dollar value of all benefits, decreases the dollar value of the annual limit (regardless of whether the plan or health insurance coverage also imposes an overall lifetime limit on the dollar value of all benefits).

Increased Disclosure

To maintain status as a Grandfathered Plan, a plan must provide a statement, in any plan materials provided to participants or beneficiaries describing the plan benefits (e.g., summary plan descriptions), that the plan sponsor believes that the plan is a "grandfathered health plan," and must provide contact information for questions and complaints. Model language is offered in these interim final regulations that can be used to satisfy this disclosure requirement.

Maintenance of Records

A plan intending to be a Grandfathered Plan must maintain records documenting the terms of the plan on March 23, 2010, and any other documents necessary to verify, explain, or clarify its status as a Grandfathered Plan. Records must be available for inspection by plan participants, beneficiaries, federal or state agency officials.

Transitional Rules Grace Period

If, after March 23, 2010, a plan makes changes and the changes are adopted prior to June 14, 2010, Grandfathered Plan status is preserved if the changes are revoked or 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. Changes are considered to be adopted prior to June 14, 2010 if the changes are (i) effective before June 14, 2010, (ii) effective after that date pursuant to a legally binding contract or (iii) effective on or after June 14, 2010 pursuant to a written amendment adopted before June 14, 2010.

Collectively Bargained Plan

In the case of health insurance coverage maintained pursuant to one or more collective bargaining agreements ratified before March 23, 2010, the coverage is a Grandfathered Plan at least until the date on which the last agreement relating to the coverage that was in effect on March 23, 2010 terminates. Thus, before the last of the applicable collective bargaining agreement terminates, any health insurance coverage provided pursuant to the collective bargaining agreements is a Grandfathered Plan, even if there is a change in issuers during the period of the agreement. If, however, an employer or employee organization enters into a new policy, certificate, or contract of insurance after March 23, 2010, then that policy, certificate, or contract of insurance is not a Grandfathered Plan with respect to the individuals in the plan.

* In general, for purposes of the Health Care Reform Act, a Grandfathered Plan is: (i) an employer- or employer-organization-sponsored group health plan, (ii) that provides medical care, through insurance, reimbursement or otherwise, and (iii) as in existence as of March 23, 2010.

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Plan sponsors should begin reviewing their plans and any upcoming changes to determine the impact these new regulations may have on the plans grandfathered status. If you have questions about the rules applicable to Grandfathered Plans, how they will impact your company's benefit plans or the Health Care Reform Act in general, please contact one of the members of Reed Smith's employee benefits team listed below, or the Reed Smith attorney with whom you regularly work.

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